A Profitable BOOK

OF

Mr. *Iohn Perkins*,

Sometimes Fellow of the Inner

TEMPLE.

Treating of the Laws of ENGLAND.

Tranſlated out of French into Engliſh for the benefit of young Students and others. An. Dom. 1657.

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Fr. J. Baird

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FINIS.

GRANTS.

CHAP. I.

FOrasmuch as unto a Grant, a Grantor, Grantée, and a thing granted are requiſite and neceſſary: Firſt, therefore it behoveth to ſhew what perſons may grant and what not; and of ſuch perſons as may grant, by what names they may grant: And then what perſons may be Grantees, and by what names they may be Grantees; And then it behoveth to ſhew of the thing to be granted; And as to that, Firſt, it ſhall be ſhewed what things ſhall be granted by deed, and what without deed: and then what things a man may grant or charge: and then what things ſhall paſſe by the grant of other, &c. P. 13. h. 8 12.

2 And to know what perſons may grant, and what not, it is to be underſtood, that ſome grants of ſome perſons are void; ſome grants of ſome perſons are voidable by themſelves,

and their heires, and by those who shall have their estates for ever. And some grants of some persons are voidable by the Grantors only during certaine time, and some grants of some persons are voidable after the death of the Grantor by the heires of the Grantors, and not by the Grantors, or by any other person during the life of the Grantors, &c.

H. 14. h. 8. 16. 3 And know, that the grants of all dead persons in Law, as Monks, Friers, and Canons professed and such like others are void if they be not made by the Soveraignes of such houses, or by matter of conclusion, or otherwise that it be in special cases and therefore if a Monk, Frier, or Canon professed, who is not

M. 2 H. 3. 5. soveraigne of the house, grant unto me an Annuitie by deed poll, the grant is void notwithstanding that he be de-raigned afterwards, or

H. 32. h. 6. 31. made Soveraigne of the said house, or of another house: or created a Bishop, &c.

4 And if a commander of the Hospital of Saint Johns of Jerusalem in England, grant a rent charge issuing out of land which he hath in his commandry without the knowledge of the Prior, the grant is void, &c. But if a

P. 10 E. 4. 4. Monk or a Frier, &c. by the commandement of the Abbot or Prior who is soveraign of the house and in the name of the Abbot or Prior may make a grant, the same shall be good, if the same be delivered as the deed of the Abbot or Prior by their assent, &c. If I. S. being seised of an acre of land in fee, joyn in the grant

14 H. 4. 31. of a Rent issuing out of thi same acre, with a Monke; the same is void as to the Monke, and good against I. S,

h. 5. 6. 5 But if a Monke or other Religious man be

be farmour unto the Kings Majestie, and made a sale or a bargaine of a thing concerning his farme, such sale or bargaine is good, and upon that he shall have a Quo minus against the Vendee or Barganee in the Exchequer, &c. M.2.h.4.7.

6 And if a Feme covert grant an Annuitie by deed, the grant is void. And if a man be seized of Land in the right of his wife, and his wife grant a rent issuing out of the same Lands, without the knowledge of the husband, this grant is void, and so it is notwithstanding that the husband had conusance of it, if it be made and delivered without his assent, or with his assent, if it be made in the name of the wife and not in the name of the husband. And notwithstanding the husband were abroad out of the Countrey at the time of such grant made and delivered, so that it is not known whether he be alive or dead, yet such grant is void if the husband be living, insomuch as if the grantee by force of such grant enter into the land and distraine, the husband at his return shall have for his entrie and distresse an action of trespasse. M.1.h.5.12. M.9.E.8.28. H.4.h.4.13. H.2.h.7.15.

7 But if a single woman be an executrix, and she take a husband, if all the debts of the Testator are satisfied and paid, she may deliver the legacies of the Testator out of the goods of the Testator in despite of her husband. And if the debts and Legacies of the Testator be satisfied and paid, she may give away the goods of the Testator which remaine to pray for the soul of the Testator in despite of her husband. But such delivery of Legacies or gift to pray for the soul of the Testator, by the wife, before that the debts of the Testator are satisfied and T.13.E.1. Exec. 119. P.18.h.6.4.

paid, is void, in so much that the husband shall have thereof an action of trespasse, For that it is but a wasting of the goods of the Testator, if it be so that the goods of the Testator which remaine, will not extend to satisfie the debts of the Testator, &c.

T. 47. E. 3. 18. 8 And if there be a difference betwixt the husband and the wife, by reason whereof certaine lands of the husband are assigned unto his wife by the friends of the husband, and by his assent, and the wife grant a rent charge to be issuing out of the same lands unto a stranger, the grant is void, &c.

9 If a single woman, being seised of a Carve of Land, cause a deed of a grant of a rent charge to be issuing out of the same Land to be made, and she deliver the same deed unto a stranger as an Escrowle, upon condition, that if the Grantee goe to Rome and returne back againe before the Feast of Easter then next following, that then he shall deliver the same Escrowle, as her deed unto the Grantee; the woman marrieth a husband, and before the Feast of Easter, and during the Coverture, the Grantee go to Rome, and returne back, and the estranger delivers the escrowle unto him as the deed of the woman; This grant is good, notwithstanding that the husband were seized of the Land in the right of his wife, before that the Grant took effect, as the Deed of the woman at which time she was married to the husband: and the cause & reason is, Because that unto some purpose it shall have relation unto the time from the first delivery, that is to say, when it was delivered as an escrowle, insomuch that if the wife in

such

such case have infeoffed a stranger of the said Land, before the condition performed, and afterwards the Grantee had performed the condition, and the stranger had delivered the escrowle as the deed of the woman unto the Grantee, the Feoffee should have holden the Lands charged, &c. because that at the time of the deliverie of the deed as an escrowle, she was a single woman.

10 But in the said case, The grantee shall not have any Rent by force of the said grant, before the last deliverie, that is to say, when it took effect as the deed of the woman, and so to such purpose and intent, shall not have relation unto the first deliverie, S. when it was delivered as an Escrowle, &c.

11 But in the same case, if the woman had been married at the time of the deliverie of the deed as an Escrowle, and her husband died, and the Grantee performe the condition, and the stranger deliver the grant unto him as the deed of the woman; notwithstanding that the grant is void to charge the woman, Causa patet. See more of this in the Chapter of Deeds, and so it appeareth that some grants of some persons are void, &c.

12 Know, that some grants of some persons are voidable by themselves, by their heires, and by those which shall have their estates for ever. And as to that, know that it is a common knowne Rule. That all such gifts, grants or deeds made by an infant, which doe not take effect by delibery of his hand, are void; But such gifts, grants or deeds made by an infãt by matter in deed, or in writing which take effect by delivery of his own hand are voidable

able by himselfe, and his heires, and by those which shall have his estate.

13 And therefore if an Infant make a deed of Feoffment, and a letter of Attourney unto a stranger to make liverie of seisin, and he make liverie of seisin by force thereof, he shall P. 18.E.3. 2. be taken for a disseisor. And if an infant being seised of a Carve of Land, grant a rent charge to be issuing out of the same Carve by deed, and the grantee distraine, he shall punish him as a trespasser, notwithstanding that the infant did deliver the deed with his own P.7.E.4.5. hand. But in such case the infant nor his heire, nor his feoffee, cannot against such a deed in pleading say, That he did not grant by the deed, for that the deed is not void, but is voidable; as to say, that the grantor was within age, &c. at the time of the grant, &c.

14 If an infant give a horse, and doe not deT.25.E.3. liver the horse with his hand, and the donee 45. take the horse by force of the gift, the infant shall have an action of trespasse. But notwithstanding that maxime, If an infant be an executor, the payment of the debt of the Testator by him is good and effectual, &c. And an infant shall be bounden by all acts done by him during his nonage, which acts are for his advantage, if not in some special cases. And therefore if an infant at the yeares of discretion make a Bond for his necessary meat and drinke, or for his necessarie apparel, or for his schooling, he shall not avoid the same, Causa patet, and so it shall be in like cases.

15 And a grant made by an Infant of the P.16.h.6. age of 14 yeares of a Free Chappel shall Grant 12. be good and effectual, because that he himselfe

ſelfe cannot have it, Quære, if the infant in ſuch caſe be but of the age of 14 yeares, what ſhall become thereof becauſe he hath not diſcretion. And an Infant at the age of 14 yeares may preſent to an Advowſon, which appertains unto his preſentment, and it ſhall be good, becauſe he himſelfe cannot have it, and becauſe that after the ſix moneths paſt the Ordinary ſhall preſent for Lapps, &c.

16 All Feoffments, Leaſes, Gifts or Grants made by dureneſſe are voidable (and not void by the parties themſelves,) by their heires, and by thoſe who have their eſtates, &c. And therefore if a man ſeiſed of lands grant a rent charge by dureneſſe, and after leaſe the lands for life or yeares, unto a ſtranger, and the grantee diſtraine for rent behind, before the leaſe, or after the leaſe, the leſſee ſhall have an action of treſpaſſe: So ſhall have the heire of the grantor, if the land deſcend unto him, But know, that alwayes it behoveth, that if they ſhall have treſpaſſe, th t they be ſeiſed in deed of the land or tenements where the treſpaſſe is ſuppoſed, at the time of the treſpaſſe done.

17 If a man ſeiſed of a Carve of land, give the ſame in tayle by deed, and make a letter of Attourney to make livery of ſeiſin, and all is done by dureneſſe of impriſonment, and liverie of ſeiſin is made by force thereof, now is this a diſſeiſin unto the donor: but that doth not prove that the deed of Feoffment, and the letter of Attourney are void, for then the donor might traverſe them, and that he cannot doe, &c. And know that the impriſonment ought to be made for the making of the deed, &c. P. 41. E. 3. 9.

18 And

18 And therefore if a man, &c. imprisoned upon an execution of a Statute merchant, now a grant made by him unto a stranger, that he be assistant unto his deliverance is good and not voidable, because that he was not imprisoned for the same cause. And if a man threaten to murder me if I do not grant unto him an Annuity of twenty shillings, and for feare of death I grant unto him an Annuity of twenty shillings, now is this grant voidable. But if a man grant one Annuitie for a threatning of carrying away his goods, this grant is not voidable, for such threatning, because he may have an action of them, if they be taken, &c.

8. Ass. pl. 25.

11 R. 2. dures, 13.

M. 7. E. 4. 21.

19 Some grants of some persons are voidable by the grantors only during a certaine time; And if an Infant grant a rent by fine, this grant is voidable by himselfe during his nonage by writ of Errour, but if he do not avoid it during his Nonage, it is good for ever, and notwithstanding that he die during his nonage before that he hath avoided it, yet his heire shall not avoid it, Quære if the conusor die depending the writ of Errour.

M. 18. E. 4. 13.

20 And if a man be seised of lands in the right of his wife, and the wife as a feme sole without her husband grant a rent by fine to be issuing out of the same land, this grant shall not bind the husband during the coverture. But if the husband die before he and his wife shall reverse the fine by errour, the wife shall be bounden by this grant.

M. 7. h. 7. 4 23.

17. Ass. pl. 17.

M. 17. E. 3. 52.

21 Some grants of some persons are voidable after the death of the grantors, by the heires of the grantors, and not by the grantors, nor

noꝛ by any other perſon during the life of the grantoꝛs; And therefoꝛe if a man Non ſanæ memoriæ, being ſeiſed of a Carve of Land, grant a rent iſſuant out of the ſame Land, in fee, and die, and his heire enter and the grantee diſtraine foꝛ the rent behind, the heire ſhall have an action of treſpaſſe: But if the grantee had diſtrained in the life of the grantoꝛ foꝛ the rent behind, the grantoꝛ ſhould not have an action of treſpaſſe, foꝛ he cannot avoid his deed by diſabling of himſelfe. p. 12. E. 4. 8. H. 39. b. 6. 42.

22 But if a man being of good memoꝛie make a Charter of Feofment of certaine lands whereof he is ſeiſed, and make a letter of Attourney at the ſame time to make Liverie of ſeiſin, but befoꝛe deliverie of ſeiſin; by ſome ſickneſſe he become mute, and by ſignes which he makes, it appeareth, That Liverie of ſeiſin ſhall be made, by foꝛce whereof liverie of ſeiſin is made, that is a good feoffment.

23 But if a letter of Attourney to make livery of ſeiſin is made of certaine Land, by a man of unſound memoꝛie, and the Charter of feoffment of the ſame land was made befoꝛe when he was of good memoꝛie, and then liverie of ſeiſin is made by foꝛce of the letter of Attourney without other aſſent of the Feoffer, and the Feoffer die, now his heire may enter upon the Feoffée, but the Feoffoꝛ himſelfe in his life cannot enter. 17. Aſſ. pl. 17.

24 All matters of Recoꝛd to which a man of not ſound memoꝛy is partie, his heire ſhall not avoid foꝛ the cauſe that his fathet, &c. was Non ſanæ memoriæ, &c. And therefoꝛe if a man Non ſanæ memoriæ grant a Rent by fine, oꝛ be bounden

bounden in a recognisance, &c. his heire shall not avoid such matter, by saying that his father, &c. was Non sane memoriæ.

25 And know, that if a man be borne dumb but can well heare, such a man at full age may make a gift, by delivery of his hands by signes, and without delivery by signes. And a man that is born dumb and deafe may make a gift, if he have understanding, But it is hard that such a person should have understanding, For a man ought to have his perfect understanding by his hearing, yet diverse persons have understanding by their sight, &c. And a man born dumb and blind may have understanding: But a man that is borne blind, deafe, and dumb, can have no understanding, so that he cannot make a gift or a grant.

26 A Bastard may make a grant as an other person may. And a man attainted of Felony or murder, &c. may make a grant of a Rent or Common, or a Feoffment, &c. and the same shall bind all persons but the King for his time, and the Lord of whom the Land is holden, when his time shall come. 8. Ass. p. 25.

27 And as unto this matter. Know that Attainder of Felony, or of Murder, &c. is commonly said in three manners, that is to say, by utlagery, by verdict, and by confession. But upon every of them judgement ought to be given, otherwise it shall not be said an attainder.

28 And know, That Attainder by utlagery shall have relation unto the Exigent as unto lands and tenements, so that a feoffment of

of the Land or grant of a rent before the exigent awarded by him that is attaint in such manner is good: And Attainder by verdict shall have relation unto the time of the Felony committed according to the supposal of the Endictment, as unto lands and tenements; and so shall have an attainder by confession. 30 H.b. 5.

29 But all the attainders as unto the goods shall have relation but unto the Judgement given. So that, A gift made of goods by such a man before the judgement is good. Also there is an Attainder by Act of Parliament, And a man out-lawed in trespasse may make a gift of his goods, but the same is void to bind the King, but good to bind the partie, And a gift, grant, or feofment by the Kings villaine is void to bind the King, Quia nullum tempus occurrit Regi. But the same is good to bind the partie himselfe. But a gift of the goods of the Villaine, of a common person made by the Villaine, before seisure of his Lord, is good against all persons, for the title of the Lord in the goods of his Villaine, doth not commence but by the seisure, and the title in the Lands of his Villaine, doth begin by his entry, and of Rent, Reversion, Common. Advowson of a Church by claime, and of common issuing out of the Land of the Lord by extinguishment, and of a Rent issuing out of the Land of the Lord by Retainer, or Extinguishment And if my Villaine have a Villaine, I cannot have him before seisure. 41 Ass. p. 13. 35 E. 3. villain 12.

30 And yet if Lord and Tenant be by Knights service, and the Tenant die, his heire II. 14.h.8. 22.

heire within age, and a ſtranger take him away; the Lord ſhall have a ravi∫hment of ward, notwith∫tanding that he never ſei∫ed the ward, and the reaſon is becauſe that the title of the Lord in the Ward doth begin by the death of his Tenant, and the body of the Infant is tranſitorie. But the Lord ſhall not have a Writ of Electione Cuſtodie for the Land before entrie, becauſe that the Land is not tranſitorie.

31 And know, that the grants of divers perſons cannot be good in perpetuitie without the aſſent of others by way of grant, confirmation or otherwiſe, &c. As the grant of the Deane without the Chapter, and the grant of an Abbot without his Covent, and the grant of the Major without the Comminaltie; and ſo it ſhall be of Maſter of a Colledge, and of all others which are bodis politicke; and have a common ſeale.

P. 21. E. 4. 13. 32 And all thoſe which are recited who have a joynt poſſeſſion with their head, as the Chapter with the Deane, &c. Grants made by ſuch perſons to charge their poſſeſſion, which poſſeſſion they have in common is void to charge the beaſts of other perſons with a diſtreſſe, but his owne. As put the caſe the Deane grant a rent iſſuing out of Land which he holdeth in common with the Chapter, now by this grant, the Cattle of the Chapter are not lyable, to diſtreſſe. And in that caſe, if the Deane be created Biſhop, the grant is determined as to charge the poſſeſſion. But if the Grantee hath not avowed upon the land, as upon Land chargeable to his diſtreſſe in a Court of Record, he may

charge

charge the person of the Bishop in a writ of annuity, if the grant be not made under a special proviso that it shall not charge his person. 39 E. 3. 31. 3 H. 7. 11.

33 But if an Abbot grant a rent charge in his owne name without the assent of the Covent, and the Abbot is deposed, and another Monke is made Abbot, and he who is deposed is created Bishop: Now the Grantee shall not charge his person in a writ of annuitie, because that when he was deposed he was a dead person in Law, and not of abilitie to bring any action or to be sued in such case, and so by his deposing the grant was determined to charge his person, and also to charge the possession. But if the grant were by Fine, the possession shall be charged: But when the Deane was created Bishop, he remained alwayes of ability to be sued, &c. And if the Abbot after the grant and before he was deposed had been created Bishop, then the Grantee might well charge his person in a writ of Annuitie, Causa patet, &c. M. 16. E. 3. Abbe. 8.

34 The grant of a Rent to be issuing out of the Glebe Land by the Ordinary only, is void to charge the Glebe Land of the Parsonage, and such a grant made by the Patron alone is void, to charge the possession of the Glebe Lands, but such a grant made by the Parson alone, is good to charge the Glebe, during the time he is Parson. But if the Parson resigne his Benefice unto another man who is instituted and inducted, such grant is determined as to charge the Glebe land, &c. But perhaps he may charge the person of the Grantor in a writ of Annuitie, &c. H. 33. E. 3. 4.

35 But the Parson, Patron, and Ordinary by

by their Grant may charge the Glebe land in perpetuitie. And the Abbot and Covent may charge the lands of their house in perpetuitie; so may the Deane and Chapter, the Major and Communaltie. Mutatis mutandis, And the Patron and Ordinary in time of vacation may by their grant charge the lands of the Parsonage, &c. And diverse other persons may grant who are not here recited nor mention made of them.

8 E.4.14. 36 Now it is to shew by what names such persons who have abilitie to grant, may grant. And as unto that, know, That the name of the Grantor is not put in the deed to any other intent, but to make certainty of the Grantor, And therefore if the Duke of Suffolke by the name of Duke of Suffolke, without his name of Baptisme, grant Annuitie, Rent, Common, Reversion, &c. it is a good grant; because there are no more Dukes in England of that name. And a grant of an annuity by an Abbot, by the name of the foundation without his name of Baptism is good, if there be not any more Abbots in England of the same name of Foundation, so as the certainty may be known who is the Grantor.

37 If Father and son are of one name and the Father grant annuity by his name without any addition, this is a good grant, for when there is no addition, it shall be intended the grant of the father. If the sonne in such case grant one Annuitie by his name without any addition. (I conceive) such grant is good: For if the grantee bring a writ of Annuitie against the sonne, he cannot helpe himselfe by

by any meanes, for if he deny the deed, it shall be found against him, &c.

38 But if I. S. grant an Annuitie by deed, and in the deed the Christname, (viz. S.) is, but not his name of Baptisme, this grant is not good: and if I. S. grant annuitie by his contrary name of Baptisme, viz. by the name of T. S. some think this grant is not good, because that the deed of Thomas cannot be the deed of John, (for a man cannot have two names of Baptisme,) and so they conceive the grantor may deny the deed. 3.h.6.26.

39 And some are of contrary opinion, for when they are at issue upon the deed, the plaintiffe may give in evidence the day, yeare, and place, where the partie delivered the same as his deed, &c. then the grantor hath not any thing to helpe him, but to say, that his name is John and not Thomas, and so not his deed. Now they say, That the plaintiffe may demurre upon this evidence, for as much as he hath not gain-sayed the delivery of the deed, as his deed, they say, that he shall be concluded to say that his name is other, but as the deed doth suppose. Ideo Quære. M. 9. E. 4. 43.

40 But if I. S. reciting by his deed that his name is I S. by the same deed grant Annuitie by the name of Tho. S. this is a good grant, for the writ shall be brought upon the whole deed. And if Alice at Style reciting by her deed that she is a Feme covert, (and in truth she is a Feme sole) grant annuitie, &c. it is a good grant, for that is but a void recitall, and the grantee need not put that in his writ, and that cannot be a conclusion to him when he sheweth the deed. And so shall it be if I. S. 3 E. 3. Itin. Nor. Esto. 132.

knight

knight, reciting by his deed that he is yeoman, grant annuitie, &c.

41 But if a feme covert reciting by her deed that she is a single woman, grant annuitie, this is a void grant, for she shall not be concluded by this recitall, &c. But if a man who is baptised by the name of John, by the same name at his full age grant annuitie, and afterward is confirmed by the name of Thomas, now his name of baptisme is changed, and yet the grant is good; and if a single woman gtant to me annuitie, and afterwards taketh a husband, now she hath lost her surname, yet the grant is good.

9 E. 3. 14
12. 1, 2.
ests 58.

42 The grants of such persons which are good without nam: of Baptisme, (notwithstanding that such persons name themselves by contrary names of Baptisme,) yet their grants shall be good. And therefore if an Abbot grant common of his lands by the name of Richard Abbot, &c. and his name is Robert, this is a good grant, if there be not any more Abbots of the same name of foundation. And such things as passe by Liverie, as Land, &c. notwithstanding the deed of feofment be made of that by contrary name of baptisme of the Feoffor, and by contrary name of baptisme of the Feoffée, it is a good feofment, if liverie of seisin be made by the Feoffor unto the Feoffee, and it takes effect by the livery, and not by the deed, &c. And if a man give unto me his horse by word, and makes to me a writing of the same by his contrary name of baptisme, and by my contrary name of baptisme, it is a good gift by word, but not by the writing, &c.

27 E. 3. 85.

43 Now is to shew, what persons may be gran=

Grantees, and as to that, know, That feme covert may be a Grantee, and a grant made to a Feme covert shall be good and effectual until her husband hath disagreed. And therefore if a rent charge be granted unto a Feme covert, and the deeds delivered unto her, her husband not knowing thereof, & the husband dieth before any disagreement made by him, and before any day of payment, now the grant is good, and shall not be avoided by saying, ỹ the husband did not agree, &c. But the disagreement of the husband ought to be shewed. 15 E. 4.

44 If a feme covert be enfeoffed of an acre of land, her husband being beyond the seas, and her husband returneth, and is not content with the feoffment made to his wife, and will not suffer his wife to take the profits of the lands, nor yet to continue seisin of the same land, but causeth her utterly to relinquish and refuse the seisin & occupation of the land, and he himself utterly refuseth to occupie the land, now by this meanes, he shall discharge himselfe of the damages from the time that his wife and he did refuse the occupation of the Land, in a writ of Entry in the Per, brought against him and his wife, in case the feoffor of his wife were a disseisor. But for the time that his wife doth occupie the land, he shall answer damages, tamen quære, &c.

45 But know, that by this refusal of the occupation of the land by the husband and the wife, the free-hold is not out of them (if no other person enter into ỹ land) but they remain Tenants as to use an action, &c. But if Lord and Tenant are, and the Lord marrieth a wife, and the Lord being beyond the Sea, 16 E. 4. 4.

the Tenant doth enfeoffe the wife of the Lord and a ſtranger of the tenancie, and the
10 E. 4. 21. Lord returneth and diſtraineth the cattle of the ſtranger for his rent; now by this diſtreſſe the wife is out of poſſeſſion of the land, and the poſſeſſion doth wholly remaine in the ſtranger, who is the other Feoffee; for the taking of the ſtreſſe by the husband is a ſufficient diſagreement that his wife ſhall not take by the Feoffment: for otherwiſe, the husband ſhall be greatly miſchiefed. For, for all the time that his wife ſhall be adjudged in poſſeſſion of the Tenancie, he himſelfe is ſeiſed of the tenancy in the right of his wife, ſo that for all that time he ſhall not have the Rent of his Seigniorie, if any day of payment of Rent be incurred in the meane-time, tamen quære, &c.

8 h. 6. 14. 46 A Feme Covert may be a diſſeiſeres notwithſtanding that her husband doe not aſſent to the ſame, and the husband ſhall be charged with the damages in aſſiſe brought againſt him and his wife. But if the husband diſſeiſe another man to the uſe of his wife and the wife agreeth unto the ſame, yet the Freehold ſhall not be ſaid in her. And to this purpoſe, there is a difference when the wife hath right of entry, or title of entry into any land, and when not. And therefore if a ſingle woman be diſſeiſed, and the take husband, and
44 E. 3. 9. the husband enter, now by this entry the freehold ſhall be adjudged in the wife, becauſe ſhe had a right to enter.

47 And if a ſingle woman enfeoffe a ſtranger by deed indented upon condition, the condition is broken, the woman takes a husband;

the

the husband entereth upon the feoffee, by this entry, the freehold shall be said to be in the wife, because that she had title to enter. And it is called title of entry, because that she cannot have a writ of right against the feoffee, for she hath departed with her right by the feoffment, which she cannot bring back without entry, which ought to be for the condition broken, &c. And in the case of disseisin, she had right of entrie, in so much as she might before the coverture, or she and her husband might after the coverture, have a writ of Right against the disseisor, &c. And an infant may be Grantee, Lessee, Obligee, Resignisee. And an Infant of the age of discretion may be a disseisor by his actual entry.

48 But if I. S. disseise a stranger unto the use of an Infant, the freehold shall not be in him before his agreement. But if an Infant hath right, or title to enter into an acre of Land, and a stranger entreth to the use of the Infant, now the freehold shall be said to be in the Infant before his agreement. And so shall it be of a man of full age. And a man attainted of Felony, Murder, or Treason, may be Grantee, and a Clarke convict may be Grantee, and a man imprisoned may be Grantee, &c. and the Kings villaine may be Grantee, and an alien may be Grantee. And a man outlawed in a personal action may be Grantee and a bastard may be a Grantee, or a Purchasor, but a bastard cannot be heire, nor have heire without issue of his body begotten.

49 But if a bastard eigne (who is mulier in the spiritual law,) continueth possession in

lands or tenements as heire to his father all his life time, and dieth without interruption of his possession, his issue shall hold the land for ever against the mulier; and if such a bastard entereth into an acre of land after the death of his father, of which acre his father died seised in fee, and the bastard doth give the same acre in taile to hold of him and his heires by twelve pence, and dies seised of the reversion without interruption, this dying seised shall make his issue able in law to hold the land against the mulier, if such a bastard eigne entered after the death of his father into land whereof his father died seised in fee, and is impleaded of the same land and vouch, &c. & the vouchee entereth into warranty by force of the lien made unto his father and his heirs, and process continueth until the demandant hath judgment to recover against the bastard, and the bastard hath judgement to recover over in value against the vouchee, and either hath execution against the other, and the bastard dieth seised of the land which he had in execution, quære, whether the mulier shall falsifie this recovery, &c.

2 Ed. 2. bastard 19.

50 If a man hath issue two daughters, whereof one is a bastard by our law, and mulier by the spiritual law, and dieth seised of one acre of land in fee, and both the daughters, that is to say, the bastard and the mulier enter into the same acre and occupie as one heire to their father, and the bastard dieth seised without interruption, it is said, that her issue shall have the halfe of the acre as heire to his mother, tamen quære, because the other sister did enter.

51 And know, That an Abbot may be Grantee, and Deane and Chapter, Maior and Comminaltie may be Grantees: but a Monke or Frier professed, &c. cannot be Grantee, if he be not soveraigne of the house. But he may be executor with the assent of his Soveraign; and he may be Farmer to our Lord the King. A man of unsound memorie may be Grantee; and divers other persons may be Grantees, who are not here specified. 5 H.7.25. M.19.H.6. 25.

52 It is now to shew, by what names Grantees may be. And as to that, know, that there ever ought one to be named in the beginning of the Grant, who may take by force of the grant, otherwise the grant is nothing worth. And therefore, if a man grant annuity unto the right heirs of John at Stile, and John at Stile be living at the time of the grant the grant is nothing worth, for there is not any such person at the time of the grant; for John at Stile he cannot properly have an heire during his life. But if a rent charge be granted unto I. S. during his life, the remainder in fee to the right heirs of I. K. and I. K. be living, and the deed is delivered unto I. S now ȳ remainder is good, conditionally sc. if I. K. be dead when the remainder fals, & hath heir, then it is good, otherwise not; And so, if land be leased for life, the remainder to the right heirs of I. S. who is alive at the time of the lease, &c. And the reason is, because that there is one named in the Lease who may take immediately in the beginning of the lease. 10 E.3.45. M.27.E.3. 87. 32 H. 6. Festi.9.9. T.1.H.7. 31.

53 But if a rent be granted for life unto ȳ right heirs of I. S. who is alive, the remainder to I. K. now all the grant is void, because

there is not any perſon who may take immediately, and the remainder cannot be good but in reſpect of the particular eſtate, if not in ſpecial caſes, &c. And if a man ſeiſed of a rent charge in fee, grant the ſame rent unto a ſtranger for life, and the tenant of the land attorne, &c. And afterwards by another deed the grantor grant the reverſion of the ſame rent unto the right heires of I. S. who is alive, this graut is void, becauſe that there is not any perſon who can take; But if I. S. had been dead at the time of the grant of the reverſion then the grant had been good; and ſo know that theſe words (right heires) may be the name of the Grantee.

2 E. 3. 1.

54 And if I. S. have iſſue two ſons, and a rent is granted unto the firſt ſon of I. S. and not by any other name, it is a good grant if the deed be delivered. But if I. S. hath not any iſſue, and a rent is granted unto him who ſhall be the firſt iſſue of I. S. whether it be ſon or daughter, this grant is void, cauſa patet.

30 E. 3. 18.
2 E. 3. 1.

55 And in ancient time, a Grant made Abbathiæ beatæ Mariæ, &c. Et Monachis ib. Deo ſervientibus had been good, ſo had it been of a Grant made Deo & Eccleſiæ, of ſuch a place. But ſuch Grants are not good at this day, becauſe there is not a perſon named who can take by force of the Grant. And a Grant made to ſuch an Abbey, and to the Sachriſt of the ſame Abbey, is void at this day. And ſo it is if a grant be made to ſuch an Abbey, and to three or four Monks of the Abbey, although their names be named, &c. for that they are dead perſons in law. But a grant made unto the Church-wardens of ſuch a Church,

39 Aſſ. p. 20.
33 h. 6, 23.
49 E. 3. ſeſts 98.
12 h. 7. 27.

Church, without naming of their names is good. But a grant made unto three or four of the Parishioners of the Parish of St. Mary, in such a place is not good: But a grant made unto the Bishop of Winchester without other name is a good grant; and a grant made unto the next of the kind of I. S. is a good grant. 20 E. 4. 2. 12 h. 4. 3.

16 If a rent be granted unto I. S. for life, the remainder in Fee unto him who shall first come at Pauls the next day in the morning, this remainder is good upon condition, viz. if I. S. dot not dye before the time; and also if one come to Pauls the next day in the morning, and if he who first come be not a Monk, or other person, who is dis-abled to take by the grant. And so it shall be, if the remainder be granted unto him who I. S. shall name within three dayes, &c. But if a rent be granted unto I. S. or I. D. this grant is void for the incertainty of the grant, for the deed is in the disjunctive, &c. and the delivering of the deed unto I. S. cannot make the grant to be good unto him, for a rent cannot passe without deed, then delivery of the deed, cannot cause a deed that is void, to take effect. 30 Ass. pl. 47.

17 Now is to shew, What things may be granted or given without deed, and what not. And as to that, Know, That all Chattels, reals, or personals, may be granted or given without Deed, if not, that it be in speciall cases. And therefore if a man give unto me his Horse or Cow, or a Bow, or a Launce, or other such like thing, such gift is good by word: And if a man give unto me by word his corn growing upon the land it is good. P. 15. E. 3. 41.

good. And if a man give unto me a Tree growing upon his Land, it is good without deed.

58 But if Tenant in tail give to me a tree growing upon the Land, and dies before that I have cut down the tree, and his issue entreth into the land where the tree is growing, if I cut down the tree, he shall have an action of Trespasse, because that the Tree is annexed to the free-hold, and by the gift comes of the nature of the land: But otherwise it shall be, if the donor of the Tree had been sole Tenant of the land in Fee-simple in his own right.

18 E. 4. 21.
18 E. 4. 6.

59 But if Tenant in tail give Corn growing upon the land unto me, and dieth before that I have severed the same from off the land, yet I may afterwards sever the corn and take it, for that the Executors of the Tenant in tail should have had it.

10 E. 4. 2.

60 If Guardian in Knights service be of the bodie and land, he may grant the wardship of the land without deed, because it may passe by libery of seisin: And as to the body, some are of opinion that it may be granted without deed; for they say it is but a chattel, and the executors of the Guardian shall have the body. But that seems to be but little reason; for if a rent charge be granted unto a man for years, and he make his executors and dieth, his executors shall have the rent, and yet it cannot passe without deed. But it seemes that the wardship of the body shall not passe without deed, for it doth not properly lie in libery of seisin, no more than a villain in grosse. And a man shall have a writ of Right of ward of the body, and in the writ of Non-tenure is a good

12 E. 3. gr. 59. 22. 1. 2. br. 937.

10 h. 6. 12.

good plea, as unto the body, and in the same writ voucher lieth for the body, which prove that it is no personal thing, so that it seemeth it cannot be granted without deed, tamen quære.

61 If a man seised of an acre of land, lease the same unto a stranger for life, the remainder to I. S. in fee, this is good without deed, because that it passeth by livery of seisin. But the reversion of one acre of land cannot be granted for life in taile, or in fee, without deed: But the reversion of one acre of land may be granted for years without deed, &c. But a rent common in grosse, advowson in grosse, and villein in grosse, cannot be granted for years, for life, in taile, or in fee, without deed, if not in special cases. So is it of Estovers in grosse. 10 E. 3. 1. 11 H. 4. 3. 5 H. 6. 33.

62 But an use may be sold without deed, (and yet it shall descend to the heire of Cestuy que use, if it be an inheritance in him) the reason is, because the sale is but a contract; and a house or land may be sold without deed, &c. And if Cestuy que use of a reversion, wils, that his executors shall sell the reversion, and dies, his executors may sell the reversion without deed. And a rent may be granted by one coparcener unto another upon partition without deed. Quære, if the Parson of a Church may grant the tythe of his Parsonage for yeares, rendring to him rent, without deed; some conceive, that he cannot, for they say, that notwithstanding that, when tythes are severed, they are but chattels personals; yet to the Parson of the Church they are as his freehold, &c. 7 E. 4. 14. 19 H. 6. 24. 11 H. 4. 3.

63 If Lord and Tenant be of arable land

lands by Fealtie, and the service to render the tenth sheafe before the land shall be sowed; the Lord cannot grant this service for yeares without deed, and yet when they are severed they are but personals: but the Parson of the Church may take his tithes when they are severed from the tenth part, &c. But the Lord cannot take such services when they are severed without the assent of the Tenant, &c. And there is a writ de advoca, decim, &c. as appeareth by Statute of West. 2. Cap. 5. which beginneth De advocationibus Ecclesiarum, &c. in the end, &c.

64 A bodie politique, as a Major and Communaltie cannot make a lease for yeares of lands, whereof they are seised in the right of their Corporation without deed; the same law is of a gift of Chattels personals, mutatis mutandis, &c. But a lease for yeares made by an Abbot is good without deed during ẏ time that he is Abbot, & a gift of Chattels personals made by an Abbot is good for ever, without deed. And also his successor shall be bounden by a recognisance made by him: But otherwise it is of a deed inrolled, &c.

4 h. 7. 17.
37 h. 6. 3.
9 h. 6. 25.
M. 14. E. 1.
Abbe. 4.

65 Now is to shew of things to be granted or charged: And as to that, know, that it is a common Learning in the law, that a man cannot grant or charge that which he hath not; And therefore if a man grant a rent charge out of the Manour of Dale, and in truth he hath not any thing in the Manour of Dale, and after he purchase the Manor of Dale, yet he shall hold it discharged. Also a man cannot charge a right, for it shall be a good plea for him to say against such grant by matter in fait, that he had not any thing in the

14 h. 4. 31.
9 h. 6. 25.
10 h. 6. 12.
31 Ass. p. 24.

the land at the time of the grant: But in such case, if the grant had been by fine executory, the law is contrary.

66 And therefore, if a man grant the reversion of an acre of land where hee hath nothing in the land, by fine executory, and afterwards he purchaseth the reversion, now the Grantee shall enter when the reversion doth fall, or shall have execution thereof by a scire facias: But if two men joyn in a grant of a reversion by writing, and one of them hath nothing in the reversion, but the whole reversion is in the other, and the particular tenant attorneth, it shall be onely the grant of him that had the reversion; but if the grant had been by fine, it should have been otherwise. 11 H. 4. 1.

67 If Lord and Tenant are of three acres of Land by Fealtie and twelve pence, and the Lord grant the services of a third acre unto a stranger, it is a void grant, notwithstanding that it be by fine. If husband and wife hold one acre of land joyntly of I. S. for their lives, and I. S. grant the Reversion of the acre of land which the husband alone holds of him for life, and he sale doth not hold any part of him, this grant is void. 7 E. 4. 25. 31 E. 3. gr. 93.

68 But if a man grant the Reversion, Omnium tenentium suorum; tàm liberorum, quàm Nativorum, qui tenet ad terminum vitæ vel annorum, by this grant all the reversions which he hath shall passe with the attornment of the Tenants, as well as if the Tenants had been recited or named. And if Lord and three Joynt-tenants are, and the Lord grant the the services of one of them unto a stranger, this grant is void, notwithstanding that the same 5 E. 3. 34. 7 E. 4. 25.

Tenant

Tenant attorn and survive his companions, for attornment cannot make a bad grant good, but otherwise shall it be by way of release.

69 And therefore, if Lord and two joynt-tenants are, and the Lord releaseth all his right unto one of them, this is good, and shall enure unto them both, for one of them onely doth not hold of him, and it shall be prejudicial to no person that the services shall be extinct by the release, but unto the Releasor himself. And alwayes a Deed shall be taken strong against him who made the deed, &c. If Lord and Tenant be of three acres of land, viz. white acre, and two other acres; the Lord grants unto the tenant by deed that he will not distrain in white acre for his rent & services, this grant shall not enure to such intent to determine the Seignorie in any part, but shall enure by way of covenant, so that if the Lord distrain in white acre for his services, the tenant shall have an action of covenant.

2 E. 2. Action for le stat.

70 If a man hold an acre of land of I. S. by fealty and suit as of his Manor of Dale, & I. S. is also seised of another Manor called T. and I. S. grant unto the Tenant that he shall do his suit at his Manor of I. this grant shall not determine the suit at the Manor of Dale. And if I. S. in the same case had granted unto his Tenant, that he shall give unto him yearly twelve pence for his suit, this grant shall not determine nor alter the tenure.

7 E. 4. 25. 20 H. 6. exring. 2.

71 But if Lord and Tenant are of two acres, &c. and the Lord release unto the Tenant all the right which he hath in one acre of the same land, it is a determination of the whole Seignorie; And to this purpose there

is

is a difference between a releaſe in fait, and a releaſe in law. For if the Lord purchaſed one of the acres in fee, which are holden of him, that is no determination but of the rate of the ſervices which are annual and ſeverable, and he ſhall have the whole corporal ſervice. But if the annual ſervices be intire, as a Horſe, a Hawke, &c. then all the annual ſervices are gone by the purchaſe: but if one of the acres deſcend unto the Lord, there, if the annual ſervice be entire, then ſhall he have the entire annual ſervice out of the remnant of the tenancy. But if it was ſeveral, as rent, &c. then it ſhall be apportioned according to the rate of the land. But if the Lord diſſeiſeth his Tenant of part of the tenancy, the whole Seignorie is ſuſpended: for a Seignioꝛie ſhall not be ſuſpended in parte and in eſſe, for other parcel to every intent, ſimul et ſemel in one perſon, if not in ſpecial caſes, but a ſeignioꝛy may be determined in parte and in eſſe, for other parte ſimul et ſemel, &c

4 Aſſ. p. 5. 40 E. 5. 40 34 Aſſ. p. 15. 19 E. 4. 1.

72 If a man hath a rent charge of two ſhillings iſſuing out of black acre, & hath no more rent, and he reciting by his deed, where he hath a rent charge of two ſhillings iſſuing out of black acre, and white acre, granteth ỹ ſame rent unto a ſtranger, this is a good grant to charge black acre with attornment of the tenant: And if a man hath a ſhil. rent charge iſſuing out of black acre & white acre, and reciting by his deed, whereas he hath two ſhillings rent charge iſſuing out of white acre, grant the ſame rent unto a ſtranger, this is a good grant with attornment, &c. for the whole

whole rent is issuing out of every acre, and out of every parcel thereof, &c.

5 E. 3. 31. 73 If three coparceners be of a Seignorie in grosse, and one grant her part unto a stranger, this is a good grant with Attornment of the Tenant, &c. If Tenant for life be of three houses, and four acres of lands, and he in the reversion grants the reversion of two houses and two acres of land, and the Tenant attorneth this is a good grant, for such reversion the grantor had. But in that case the thing granted is uncertain. And as unto that, know, That of every thing uncertain which is given or granted, election remains to him to whose benefit the grant or gift was made, to make the same certain, if not that it be in special cases.

9 E. 4. 39. 11 E. 3. Annuity 274. 74 And therefore, if a man have five horses in his stable, & he giveth unto me one of his horses in his stable, now I shall take which of the horses I will. And if a man grant unto me 20 shillings of rent charge, or 40 shillings of rent charge, I may distrain for which of these rents I will, but I shall not have both. So shall it be, if rent or common be granted, &c.

75 And if a Feoffment be made unto a man of two acres, scil. of one acre in tail, and of the other in fee, and doth not shew in certain in which acre the Feoffee shall have fee, nor in which acre he shall have an estate taile, and a Præcipe is brought against the Feoffee of both acres, and he loseth by default, and afterwards he brings a writ of Right of one acre, and that is put in view, and brings quod ei deforciat, of the other acre, and that is put in view, &c. It is at the determination of the will of the Feoffee

ottee, in which acre he will have fee, and in which acre he will have an eſtate in tail, &c.

76 If a man ſeiſed of two acres, leaſeth them for term of life, the remainder of one acre unto a ſingle woman, and doth not ſhew in certain of which acre, and afterwards the woman takes husband, the tenant for term of life dieth, and the husband enters in to one acre, and thereof doth enfeoff a ſtranger by metes and bounds, and dieth, Now the wife ſhall not enter into the other acre, and chooſe that; for it was her folly to take ſuch a husband who would do ſuch act when the remainder fell, forasmuch that the title to the remainder did begin by the grant which was before the marriage, &c.

77 If a man were enfeoffed of two acres of one in fee, and of the other for life, and doth not ſhew in which acre he ſhall have fee, &c. and the Feoffee doth enfeoff a ſtranger of one of them by metes & bounds, this is no forfeiture, cauſa patet.

78 If a man be enfeoffed of two acres of one in fee, and of the other in tail, and the Feoffee hath iſſue, and doth enfeoff a ſtranger of one acre and dieth, his iſſue ſhall not have Formedon againſt the Feoffee of this acre; for when his Father made a feoffment of one acre, this feoffment was not of one acre ſevered from the other acre, ſo as one acre is as advantagious for the iſſue as the other acre, for the Feoffee, and he ſhall occupie all in common: and notwithſtanding that the feoffment had been made in ſeverality, that is to ſay, by metes and bounds of one acre, the iſſue ſhall be bounden thereby, forasmuch as he cannot inherit, if his father

father accept not of the gift, and this feoffment shall not declare his will from the time of the gift.

79 And therefore if a man grant a rent charge in taile, and the Grantee bring a writ
35 H. 6. 5. of Annuity, and recover, his issue shall not have a Formedon of the rent granted, &c. If a yearely rent be granted, issuing out of the Church of St. Peter, the Church of St. Peter and St. Paul is not charged by such Grant, for they cannot be intended one Church.

80 If two joynt-tenants in fee are of one acre of land, and Lease the same acre unto a stranger for life, and the Lessee granteth his estate to one of the Lessors, it seems unto some men, that as unto one moitie, it shall enure by way of surrender, and as unto the other moitie it shall enure by way of grant; and their reason is, because that the Grantee had but one moitie of the Reversion of the Land in right insomuch as if he had granted the whole Reversion to a stranger, and the Lessee attorn, yet but a moitie passeth from him, and
5 E. 3. 19. by the like reason the Grant of the Lessee shall enure by way of surrender, but of the moitie &c.

81 And if Tenant for life be of one acre of Land, out of which acre a rent is issuing in fee, and the Tenant for life purchaseth the same rent in fee by grant, this grant is good to take effect in the heirs of the Tenant for life, and yet he had possession of the whole land at the time of the grant, &c. And if Lord and
35 h. 6. 41. Tenant be, and the Lord grant his Seignory unto the Tenant, and to a stranger, this grant shall enure by way of extinguishment for one moitie,

moitie, ſcil. to the Tenant, and for the other moitie, it ſhall enure by way of grant unto the ſtranger, &c.

82 And if Tenant for life grant his eſtate unto one of the Leſſors, it ſeemeth unto ſome, That this ſhall enure by way of ſurrender for the whole, & their reaſon is, becauſe ỹ every of the leſſors is ſeiſed of the whole, and of the whole reverſion, and the grant of the eſtate of particular tenant cannot take effect by way of grant without livery of ſeiſin, and the Grantee cannot take livery of ſeiſin of the ſame land, becauſe he hath the reverſion in fee of the whole land in him immediate to the ſame particular eſtate, and in his own right. And therefore, if Leſſee for life grant his eſtate to him in the reverſion in fee in his own right, and immediate to the particular eſtate this grant ſhall enure by way of ſurrender, &c. But if a woman who is ſingle ſeiſed of one acre of land in fee, leaſeth the ſame acre for life, and the woman taketh husband, and the leſſee granteth his eſtate unto the husband, that ſhall enure by way of grant, cauſa patet.

83 And if a man ſeiſed of an acre of land leaſeth ỹ ſame acre for life, the remainder for life unto a ſtranger, & ỹ leſſee grant his eſtate unto his leſſor, ỹ ſhal enure by way of grāt, & yet the grantee is ſeiſed of the whole reverſion at the time of the grant but the ſame reverſion is not to take effect immediately after the eſtate of the leaſe determined, if he in the remainder be living, as he is at the time of the grant, &c. And if Lord and two joynt-tenants are in fee, and the Lord grant his Seignorie to one of the Tenants, this grant ſhall take effect by

way of Extinguishment, for the whole, &c. And to some it seemeth it shall enure by way of grant for the whole, and they say, that otherwise the Lessee shall not have liberty to depart with his estate to one of his Lessors, &c.

84 And therefore, if three Joynt-tenants are of one acre of land, and one of them releaseth all his right unto one of his companions, now he shall be in, in the per, for the third part of which the release is made, &c. And it hath been holden, if the lessee for life grant his estate unto his lessor and a stranger, that by force of this grant, they are joynt-tenants.

11 33 H. 8.

85 And if lessee for life be, and the reversion descend unto two coperceners, and one of them taketh husband, and the lessee grants his estate unto the husband & wife, the same shall enure by way of grant for the whole, &c. And know, that a right shall not passe by way of grant, if not by extinguishment, &c. And by release it may be extinguished.

21 E. 4. 2. 6 H. 7. 8.

86 And therefore, if the Disseisee of one acre of land grant his right unto a stranger, it is nothing worth but if he releaseth all his right unto the Disseisor, it is good, if it be by deed. And if he confirm the estate of the Disseisor, the confirmation is good. And if Obligee and Obligor be, and the Obligee give the obligation unto a stranger, the gift availeth nothing as to bring an action in the name of the Donee; (for a thing in action cannot be given) but the Donee may cancel the Obligation, or give the same unto the Obligator, &c.

87 If annuitie be granted by the Grantor and his heires unto a stranger and his heires,

21 E. 4. 20.

&

it seemeth to some that the Grantee may grant it over, because it is an inheritance in him, Tamen quære. For the Grantee hath not any remedy for to have it but by way of action. Quære, If the annuity had been granted for term of life, &c. If a man seised of an acre of land leaseth the same acre for life, the remainder unto the right heirs of I. S. who is living, this remainder takes effect presently, but is in no person to grant, because it is in abeyance, viz. in the consideration of the Law, &c. 27 E. 3. 87.

88 But if Tenant in tail bee of an acre of Land, the remainder of the same acre unto his right heirs, he may grant this Remainder, yet it is not executed in him, &c If Lord and Tenant be, and the Tenant lease the tenancy unto the Lord for life, the Lord may grant his Seignory unto a stranger and yet it is not in suspense at this time, &c. 17 Ass. p. 60. P. 5. E. 3. 16.

89 But if Lord and Tenant be, and the Tenant infeoffeth the Lord of the tenancy upon condition, the Lord may grant his Seignorie, and yet it is not determined nor extinguished: For if the condition be broken, and the Tenant enter, the Seignorie is revived: But if before the entry of the Tenant, the Lord enfeoffeth a stranger of the Tenancy, and then the first Feoffor, that is to say, the Tenant enter, the Seignorie is not revived, but is determined, because that the Lord doth depart with the tenancy to his Feoffee discharged of the Seignorie. And so in the same case the Lord may depart with his Seignorie by such means, &c.

90 A Parson of a Church may grant his tythes for yeares, and yet they are not in him 38 E. 3. 6. 24 E. 3. 25. at M. 30. H.

at the time. But if Lord and Tenant be, the Lord cannot grant the wardship of the heir of the Tenant living the Tenant. But if a man grants unto mee all the wooll of his sheep for seven yeares, the grant is good, &c.

91 If land be leased unto me for years, the terme to begin at the feast of Easter next ensuing, and before the Feast I grant my terme unto a stranger, it is a good grant. And if a Rent be granted unto mee, and before I be seised thereof, I grant the same Rent unto a stranger, the grant is good.

92 If he that hath a Reversion depending upon an estate for life, grant a rent-charge issuing out of the same, the grant is good to charge the land after the death of the particular Tenant, &c. If a man sell unto me goods, and I suffer them to be in his possession, and a stranger takes them out of his possession, and I grant or sell them unto the stranger it is a good sale, or grant, &c.

37 H. 6. 18.

36 Ass. p. 30.

33 Ass. p. 17.

93 But if a man take my goods out of my possession, and sels them unto me in open market, the sale is void, for it cannot be good, if not that the property be thereby altered, and that cannot be for before the sale, and at the time of the sale, the property was in me, and then if it shall be altered by the sale, it ought to be altered in me, and that shall be impertinent, for then it should be altered out of me, immediately in me, &c.

M. 5 E. 4. 61.

94 If a villain be granted for life, the grant is good: And in the same case, if the villain purchase lands in fee, and the grantee for life entereth into them as into lands purchased by his

his villain, he shall keep the lands unto him and his heirs, and yet he hath not estate in the villain but for life, but the reason is, because that he hath the same as a perquisite, &c. And to that purpose there is a difference when a man shall have one thing in respect of another thing, and when in the place of another thing, and when by reason of another thing.

95 And therefore, if a man leaseth lands for life, & the lessee doth waste, & the lessor grants the reversion unto a stranger, and the lessee attorns, the Grantee shall not have an action of waste, for this waste, because it was not to his dis-inheritance, and the Grantor shall not have an action of waste, because the reversion was out of him, &c. And if Lord & Tenant be, and the Tenant aliens in Mortmain, and the Lord grants his Seignorie unto a stranger, and the tenant attorns, now the Grantor shall not enter for Mortmain (notwithstanding that it be within the year after the alienation) because that the Seignorie in respect of which he is to enter, is out of him.

96 If Lord and Tenant be, and the Lord grant his Seignorie for life unto a stranger, and the Tenant attorneth, and dieth without heir, & the Grantee enters for escheat, he shall not have a greater estate in the Tenancy then he had in the Seignorie, because the Tenancy cometh in lieu of the Seignorie: And so shall it be of lands recovered in value by voucher, as to this purpose, mutatis mutandis, &c. P. 5. E. 4. 3.

97 If a man seised of a Manor unto which an Advowson is appendant in fee, leaseth the same Manor unto a stranger for yeares, or for the life of another man, and the

Church becoms void during the term, and the
4 H. 7. 11. years expire, or he for whose life it was dieth
4 before the six moneths passe, and before the les-
see hath presented; yet the lessee shall have the
presentment because he is to have the same as
a perquisite by reason of the Manor. And if
feoffee of one acre of land upon condition be,
and the feoffor enters and doth trespasse, and
afterwards the condition is broken, and the
Feoffor enters, yet the Feoffee shall have an
action of trespasse against the Feoffor, not-
withstanding that he hath not the land
wherein the Trespasse was done, Causa pa-
tet, &c.

98 If Cestuy que use be of a reversion, he
may grant the same as well as if he were in
possession, and that by the Statute of Richard
the third, made in the first year of his raign,
Chap. 1. And by the same statute, Cestuy que
use of Lands or Tenements may charge them
by his grant: vide the Statute. And a man
may grant common, or rent, notwithstanding
that a stranger takes the rent, or useth the com-
mon, for he shall not be out of possession of
them, but at his pleasure, &c.

99 And know, That all such things which
11 E. 4. 1. are granted unto a man by reason of trust,
touching the person of the Grantor, he cannot
grant them over, if not in special cases, un-
lesse in case that it be granted to him and his
assignes.

100 And also, if it be an office of trust con-
cerning the person of the Grantor, he cannot
occupy the same by deputy, if not in special
cases, unlesse in case, that the grant be so
made. An Assignee is alwayes such a person
who

who doth occupie in his own right; and a deputy such a person who doth occupie in the right of another.

101 If a man grant unto me to be his Carver, or Sewer, or Chamberlain, &c. I cannot grant the same over nor occupie them by deputie. If the grant be not so made as before is said. And so is it of other the like Offices, &c. Also the Lord Chancellor of England, Justices of the Kings Bench, Justices of the Common Pleas, and Barons of the Exchequer, cannot grant their Offices over unto other persons; or occupie them by Deputy, &c. And if annuity be granted unto me, pro concilio in posterum impendendo, I cannot grant it over, if it be not granted to me and my assignes. And Quære, whether I may then grant it. 10 E.4.14. 21 E.4.83.

102 If a man by grant have common of pasture for cattel without number, and his Grantor grants common of pasture for cattel without number in the same lands to another man, the second grant is not good against the first Grantee, because a man by his grant shall not prejudice him who hath an elder title; but the same grant is good against the Grantor himselfe. 18 H.6.30.

103 If two joynt-tenants be of a Carve of land, and one of them grants common of pasture for cattel without number, to be taken in the same land to a stranger, the grant is void against the other joynt-tenant as before is said. But it is a good grant against the Grantor himselfe. And Grantee for life of common of pasture for cattel without number, or of a corodie uncertain, cannot grant the 44 E.3.13. 33 Ass. p.3

same over, if the grant be not to him and his assignes; But Grantee of common of pasture for cattel certain, or of a corody certain, or of an advowson, or of a villain, or rent, or the like, may grant the same over, notwithstanding the grant be not to him and his assignes, unlesse there be a special proviso in the grant, that he ought not so to do, &c.

104 Common of pasture appendant cannot by grant or otherwise be severed from the land to which it is appendant, if it be in esse. So is it of Estovers grãted to be burnt in a house certain, mutatis mutandis: But a villain regardant unto a Manor, and Advowson appendant to a Manor may be severed from the Manor unto which they are appendant, and made in grosse by grant, &c. And it is a common rule in Law, that if no estate be expressed in the grant, the Grantee shall have an estate for life. But yet if there be such words in the grant which may declare the will of the Grantor, and his will is not contrary to the law, the estate shall be taken according to his intent and will, if not in special cases.

5 H.7.1.7. gr. 58.

P. 26 H. 8. 4.

105 And therefore if two marks of annual rent be granted unto a man until ten marks are levied, the grantee shall not have an estate in this rent but for five years, for the intent of the Grantor cannot be otherwise, and the words in the grant are sufficient to satisfie the same intent, &c. And if a man seised of a rent issuing out of land which is devisable, deviseth the same rent unto a stranger until his heire, viz. the heire of the Grantor be of full age, and the Grantor dieth, his heir being of

of the age of ſixteen years, the Deviſe hath an eſtate in the rent but for five years, &c. tamen quære.

106 If a man ſeiſed of a Carve of land in fee, grants ten ſhillings rent iſſuing out of the ſame land unto an Abbot, and a ſecular man; it ſhall enure as ſeveral grants, and either of the Grantees ſhall have ten ſhillings, becauſe that the grant ſhall be taken ſtrong againſt him that made it, and for the benefit of the Grantee, tamen quære. The ſame law is, Mutatis mutandis. If two tenants in common of a Carve of land joyne in a grant of a rent-charge of ten ſhillings iſſuing out of the ſame land unto another man &c.

107 But if two Tenants in common of a carve of land, leaſe the ſame carve unto a ſtranger for life, reſerving to them ten ſhillings. This ſhall take effect as ſeveral leaſes, and either of them ſhal have but five ſhillings. For the reſervation is their own act, and they ſhall not have more then they themſelves have reſerved, &c.

108 If a man grant unto me common of paſture for ten kine in his lands in ſuch a Towne; yet I ſhall not have common, but in his land commonable in the ſame Towne, and yet the grant is general, in his lands in the ſame Towne: But the reaſon is, becauſe hee doth not grant but onely common of paſture, and for cattel certain and commonable; ſo as the grant ſhall not extend but unto paſture lands. But if common of paſture be granted unto me for all manner of cattel, I ſhall not have common for Hogs, &c. Alſo if common of paſture be granted

granted unto me for my cattel, I shall not common but with cattel commonable, for a
9 H. 6. 36. Grant shall have a reasonable construction,
com. 12. &c.

109 If a man grant unto me common of pasture for my cattel whersoever his cattel shall goe, and he occupieth and manureth an hundred acres of land with his cattel, and afterwards he hath no cattel, yet I shall have common in the hundred acre, &c. But if common of pasture be granted unto me for my cattel whensoever the cattel of the Grantor shall goe, &c. In this case the Grantee shall not have common, but when the Grantor useth common with his cattel, &c.

110 If a man hath a Fish-pond, and he grants and sels unto a stranger all the fish in his pond, the Grantee cannot dig the land to mase a trench, because he may take the fish with nets, and other engins, so that alwayes a grant shall have a reasonable construction. But if a man have a Wood, and he grant all the Oaks growing in his wood to a stranger,
b. E. 1. the Grantee may cut down the Oaks, and
gr. 41. come upon the land of the Grantor with carts to carry them, for otherwise he cannot conveniently have them, &c.

111 If a man give me leave to make a
9 E. 4. 35. trench from such a spring in his lands unto my Manor, so that I may lay a Pipe in the land to convey the water to my Manor in a Conduit. If afterwards my pipe be broken, I may dig his land to amend the Pipe, &c.

112 Now is to shew, what things shall passe by the grant of other things. And as unto that, know, That all things which are incident

cident unto others shall passe by grant of those things to which they are incident; if not that it be in special cases. And therefore if Lord and Tenant be by homage and fealty, and the Lord grants the homage unto a stranger, and the tenant attorns by this grant, the fealty shall passe as incident to the homage, &c. 19 Ass. p. 20.

113 And if Lord and Tenant be by fealty and rent, and the Lord grant the rent unto a stranger, and the Tenant attorns, by this grant the fealty shall passe as incident to the rent: But in the same case, if the Lord grants the rent (saving to himselfe the fealty) the Grantee shall have the rent as a rent seck, and the fealty doth not passe, &c. If a man seised of one acre of land, leaseth the same acre unto a stranger, reserving rent, and grants the reversion of the same acre unto another stranger, and the lessee attorns by the grant of this reversion, the rent shall passe as incident to the reversion: But in the same case, if the grantor of the reversion in his grant save unto himself the rent, the rent shall not passe, &c. 44 E. 3. Hor. de son. fee 20.

114 If a man have a reversion in fee in ten shillings of rent issuing out of lands in Dale, and also hath the reversion in fee of an acre of land in the same towne, and he grant all his lands and tenements in Dale unto a stranger, by this grant the reversions shall passe: But if the Grantor had an annuitie in the same town, it shall not passe by such grant, &c. If a man hath a reversion in a Mill, and he grants totum molendinum suum, unto a stranger, by this grant the reversiō of the mill shall passe, &c. But in the cases of grants of reversions, there ought for to be attornment, otherwise 34 H. 6. 6. T. 16. E. 3. gr. 55. M. 38 E. 3. 36.

30 E. 1. Itin. Cor. Gr. 8, 9.

otherwise they shall not passe, if the grant be not by matter of Record, &c.

115 If a man give and grant unto me omnia bona & catalla sua, his Charters concerning his lands shall not passe, by these words, &c. If Lord and Tenant be by Homage, Fealty, and Rent, and a stranger brings a Præcipe quod reddat, of the Rent against the Lord, and recovers by this recovery, the Homage is not recovered, but the Fealty is, &c.

Brief 581. Fessm. 53.

116 If a man seised of a Manor unto which an Advowson is appendant, enfeoff a stranger of the Manor without saying any thing of the advowson, and without saying cum pertinenciis, the Advowson doth passe, &c. And by such feoffment the services of the Tenants who hold of the Manor shall passe with attornment of the tenants, for in such cases the services are parcel of the Manor, &c. And by grant of lands and tenements an Advowson shall passe, &c. And if land be known by the name of the house, then the reversion of the same land may passe by the name of the house, &c. And if six acres are known by the name of a Manor, then the reversion of them shall passe by the name of the Manor, &c. the same law is è converso in these two last cases, Mutatis mutandis, &c. By this word (Wood) great Wood and under-wood shall passe, &c. If I be seised of a Manor, and a stranger grant all manner of Estovers unto me, to my Manor, &c. by this grant I shall have House-bot, Plow-bot, and Hay-bot, &c.

CHA

CHAP. II.

DEEDS.

117 BEcause I have shewed in the Chap. of Grants that there be diverse things which cannot be granted without deed, I wil now therefore shew some things which are necessary concerning deeds. And as to that, know, that there are three things necessarily appertaining unto a Deed, viz. writing, sealing, & delivery: First, some thing shall be said concerning them, and afterwards shall be said other things concerning deeds, &c.

118 Notwithstanding, That some Kings and Princes have used to make blanck Patents and Charters sealed to be delivered to divers men to write what matters soever they would in them, and ỳ such Pattent have been sufficient warrant to the Pattentees, &c. Yet if a common person seal an obligation or any other deed without any writing in it, and

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deliver the same unto a stranger; man or woman, it is nothing worth, notwithstanding that the stranger make it to be written, that he who sealed and delivered the same unto him, is bounden unto him in 20 pound. For in an action of Debt brought upon this Obligation, he may plead that it is not his deed, Causa patet. The same law is of other deeds, mutatis mutandis.

119 And forasmuch as it is commonly used to write a Deed before it be sealed, and after the writing to seale it, and after the sealing to deliver the Deed unto the party, Therefore first something shall be said of the writing of it. And forasmuch as it appeareth in the Chapter of Grants, there ought to be Grantor, Grantee, and a thing granted. So in the same manner in every obligation there ought to be Obligor, Obligee, & a thing in which the Obligor is bounden, &c. And so shall it be of a Feoffment, and other Deeds, Mutatis mutandis, &c. And therefore shall be spoken of other collateral things not put into the deed,
7 E. 3. 56. and when the Deed shall be suspicious for the manner of writing of it.

120 And as to that, know, That if a Deed have not any date, yet the Deed is sufficient enough: And when the party takes advantage of such a Deed, he shall averr the day and
3 H. 4. 4. place of the delivery of it. But it is said, If
36 H. 6. the deed be dated at London in the County of
faits 4. Yorke, and in truth there is not any such place
12, 4. 23. within the same County, that this is a void deed. For the party who useth the deed shall not varie from the place dated within the same deed. And if a Deed bear date before time of memory,

memory, it is not pleadable, if it be not upon Record. But the party may well give such a Deed in evidence.

121 If a man bring an action of Debt in the Common Pleas, upon an obligation bearing date at Barwick, the Plaintiff shall take nothing by his writ, because he cannot vary from the place dated in the obligation and the Common Pleas hath not jurisdiction there. But when a Deed is pleaded bearing date at such a place where the Court hath not jurisdiction, if the Deed be not answerable, the plea is good enough. 2 E. 3. obligation.

122 And therefore if in a Replevin the Defendant avow for a Rent-charge in another place (then the Plaintiff counts) to him granted by Deed bearing date where the court hath no jurisdition, and the Plaintiff maintains his declaration (as he ought) which is found against the Plaintiff, the Defendant shall have return of the cattel. And notwithstanding that a Deed hath all his words, if it be raced or interlined in any suspicious place within the deed, or new letters written upon the old Letters, the deed is greatly suspicious, if not that it be in special cases. 2 E. 3. 57. M. 24. E. 3. 35.

123 And therefore if the name of the Grantor or Grantee be raced, or interlined in a deed Poll, the deed is very suspicious; So is it of the thing granted; or in limiting of the estate, &c. If the date of a Release be raced in the place, it is very suspicious, because it may be it was dated out of the Realm. But if the lines of a deed be written crooked, the Deed is not suspicious for this matter. M. 45 E. 3. 18. 44 E. 3. 42.

124 And notwithstanding, That a Deed Poll

Poll be raced in a place which is not materi-
H. 14 H. 4. 18. al, the deed is not ſuſpicious for ſuch matter; As if a deed of Feoffment be raced in the addition of the name of the Feoffee. Or if the deed comprehend Dedi & conceſſi, and conceſſi is raced, the deed is not ſuſpicious for ſuch matter. But otherwiſe is it, if Dedi be racey, for this word Dedi comprehends the effect and
31 E. 1. feof. 118. force of this word Conceſſi and more. For Dedi in a deed of feoffment comprehends in it a warranty againſt the Feoffor, and ſo doth not the word conceſſi. And although that a deed Poll be raced in a material place, as in the name of Baptiſme of the Grantor or Grantee, if it appear that there was no writing there before, it is not greatly ſuſpicious.

125 And if a man grant unto me a rent charge by Deed which he hath iſſuing out of the land of another man, and the Tenant attorns, and the Grantee by his Deed reciting the ſame grant, re-grants the ſame to his Grantor, and the later Deed is raced in the name of Baptiſme of the Grantor, yet it is not greatly ſuſpicious, becauſe it doth rely upon another deed, in which relier, viz. recital, it is not raced. Quære, if ſuch a Deed be raced in the date of the place, &c.

P. 25 E. 3. 41. 22 H. 6. 52. Execut. 17. 126 And notwithſtanding that this word (Executor) be raced in the will, yet the will is good enough, becauſe it relies upon the Regiſter of the Ordinary before whom it was proved, and there it appeareth whether they were made Executors or not; And if in debt brought upon an obligation, the date of the obligation be raced, and the Plaintiff ſhew forth

forth an indenture of defeasance proving the Obligation, the Obligation is good enough. So is it of Indentures Bipertite, Tripertite, or Quadrupertite, if one of them, or all of them, be enterlined or raced in a materiall place, they are sufficient notwithstanding the same, if so be ỳ they do not vary in the words. M. 41 E. 3. 29.

127 But if one indenture be raced in a place material, & the other indentures or indenture are not raced, and the Indenture which is raced doth not agree in words in ỳ place which is raced with them, or that which is not raced, the Indentures raced is greatly suspicious.

128 As put the case. The Indentures are of bargain & sale of lands or tenements: and the indenture which remaineth with the vendee is raced, and the word which is raced is (Manor) and in the other Indenture the word which is raced is (House): And the Vendor hath a Manor and also a House in the same Town where the lands sold do lie, the indenture which the Vendée hath is greatly suspticious: And so is it of interlining, and of other the like things; and if the words which testifie, That the Grantor, Feoffor, or Obligor, &c. have put their seal unto the deed, are not put in the deed, the deed is insufficient, notwithstanding ỳ it be sealed. And if it appear that a deed hath been hung in the smoak, it is suspicious. H. 40 E. 3. 1.

129 And it is to be known, that notwithstanding, that words Obligatory, or, &c. are written in parchment or paper, & the Obligor, &c. delivereth the same as his deed, & it is not sealed at the time of the delivery, it is but an Escrowl, notwithstanding that the name

of the Obligor be subscribed: and notwithstanding that yet by the custome in ancient Cities and Boroughs, in an action of Debt a man shall not wage his law against a Merchants book, and yet it is not answerable by the common law, notwithstanding that it be sealed with the seale of the party, and delivered by him.

130 So know, that writing cannot be said a deed, if it be not sealed, &c. But it is nothing to the charge, whether it be sealed with the seal of the Grantor, or not, or of a stranger, or by the Grantor, if the Grantor deliver the same writing, &c. as his deed.

131 And therefore if John at Stile write an Obligation in the name of Richard at Gappe, unto T. D. and N. N. and seale the same obligation with the seale of R. Roo, and Richard at Gappe take the same obligation so written, and sealed, and delivers the same unto T. D. as his Deed. Now this is a good obligation against Richard at Gappe, Causa patet. And so it is of all other Deeds, &c.

132 If Abbot and Covent seal a writing with the seal of a Lay man, and it is said in the Deed, In cujus rei testimonium appensum est nostrum Sigillum commune, and the same writing is delivered according to the form of law, it is a sufficient deed, and shall binde the Abbot and Covent; for this seal shall be said to be the Covent or common Seal for the time, for with their common assent they may change their common seal at what time they will.

11 E. 4. 4. 133 And if Abbot and Covent cause to be made a writing, in which it is said, Sigillum nostrum appositum, and not Sigillum nostrum commune

commune, yet the writing is ſufficient, and ſhall binde the Abbot and Covent. But if Abbot or Prior ſeale a writing made in his name and in the name of the Covent without the aſſent of the Covent, and it is ſaid in the deed, Sigillum noſtrum commune appoſuimus, and the ſame is delibered by the Abbot or Prior, without the aſſent or agreément of the Covent, this is onely the déed of the Abbot or Prior, and not of the Covent, cauſa patet. And ſo is it of Dean and Chapiter, Maior, and Comminaltie, and ſuch like other, mutatis murandis, &c. T. 82 H. 6. 4. M. 37 H. 6. 3.

134 And notwithſtanding that it be neceſſary that a Déed be ſealed, yet it is not requiſite, that there be for every Grantor, &c. who is named in the déed, a ſeveral piece of wax; for one piece of wax may ſerve for all the Grantors, &c. which are named within the deed, if every one of them put his ſeal upon the ſame piece of wax, or if another do ſo for them, &c. if the words in the deed imply ſo much, viz. if it be ſaid in the deed, In cujus rei teſtimonium ſigilla noſtra appoſuimus, or words to the ſame effect. P. 8 H. 6. 8. 27 H. 6. fcſm. 105.

135 And it is to be underſtood, that notwithſtanding, that a deed be once ſufficiently ſealed, and the print of the ſeal is all bruiſed, ſo as it doth not appear that it was ſealed, the deed is inſufficient. But if there appear any print of the ſeal upon it, and the ſeal remain annexed unto the Déed, it is ſufficient. But if the Seal be ſevered from the Déed, notwithſtanding that a print remains, the deed is inſufficient. And if it appear that the ſeal was once ſevered from the deed after it was M. 27 h. 6. 18.

delibered as a deed, notwithstāding ỹ the Seal be fixed again unto ỹ deed, the deed is sufficiēt.

136 And it is said, If the Seal of a Deed be a little bruised, if it be an ancient or a new writing, and part of the Seale remain upon which there is any print, the deed is goode-nough. But if this part which remains to the deed hath not any print, then the deed is insufficient: But if it appeareth that the piece which remaineth annexed to ỹ deed which had any print, were one severed from the deed, and softned by the fire, and so fixed again to the label of the deed, the deed is insufficient.

C. R. 2. M. desis, 159.

137 And notwithstanding that a deed be sufficiently written in my name, & sealed by me, & is not delibered by me or by another by my assent, or by my agreement or commandement the same shall not binde me for all this while it is but an escrowl. And if I make such escrowl, & let it lie by me, and a stranger gets it, it shal not bind me, for it is not yet my deed.

M. 6 H 6. 37.

138 And if I make a deed, and deliver the same unto a stranger as an escrowl, to keep until such a day, &c. upon condition, that if before that day he to whom the Escrowl is made shal pay to me ten pound, or shal give me a horse, or enfeoff me of the Manor of Dale, or

10 H. 6. 25. 41 E. 3. 29.

shall perform any other condition, that then he shall deliver this escrowl unto him as my deed, in this case, if he deliver the same unto him as my Deed before the conditions or condition be performed, it is not my deed simpliciter. But if the conditions or condition be performed, and the escrowl delibered by him after the conditions performed as my deed, then it is my deed and shall bind me, and at the

the time of this delivery, then begins it to be my deed, and shall not have relation unto the first delivery. But Quære, if it shall have relation unto the time of the condition or conditions performed. But it seemeth not.

139 But if an infant makes an obligation or other writing to be written, & seals it, and delivers the same unto a strãger as an escrowl to deliver unto him to whom it is made, when ỹ Infant shal come to his ful age, as his deed, in this case if the strãger deliver the same at ỹ ful age of the infant, it is yet void, for he hath not authority to deliver it, if not by commandement, and that was void.

140 But if a single woman delivereth such escrowl upon a certain conditiõ, &c. and before the performance she shal take husband, yet if ỹ conditions are afterwards performed, & the escrowl delivered as the deed of ỹ woman, she shall be bounden thereby. And some men think she shall not be bounden thereby, for they say ỹ by the delivery of the Escrowl by the stranger as the dẽd of the woman, then it began first to take effect as her deed, & shall not have relation unto the time of the first delivery made by the woman when she was single: insomuch, that if the party to whom the Obligation is made before the conditions performed, & before the last delivery by the stranger as the deed of ỹ woman, releaseth all actions & demãds unto the woman, and afterwards the Bailiff deliver the Obligation to whom it was made as the dẽd of the woman, because that the Conditions are performed. The Obligee notwithstanding this Release, shall have an action of Debt, upon this Obligation, which

proves that the last delivery shall not have relation unto the first delivery, and at the time of the last delivery, and at the time of the conditions performed, the woman had a husband. And all obligations made by a married woman, &c. are void against her, & also it seemeth unto them that this marrying the husband is a countermand in Law, &c.

141 But notwithstanding these reasons, It seemeth that she shall be bounden by the obligation: For at the time of the first bailment she was single, so that all things done at that time were good and lawful, &c. And it is not like unto the case, where an Infant deliver-eth a writing upon such a condition Causa patet, &c. And if a single woman covenants with me by Indenture to pay unto me ten pounds at the Feast of Easter, which shall be in the year of our Lord, 1640. and before that day she takes husband, and the Coverture continues between them until the day on which the covenant should be performed be past, she shall not therefore be discharged of the Covenant, because the marriage could not be celebrated without her assent. And he who is bounden to do a thing, or to suffer a thing to be done, cannot discharge himself thereof by his own act only, if not in special cases & so, &c. And the woman when she was single, could not countermand the Bailment, as this case is, because that the Obligée is as it were party and privie to the bailment of the obligation, in as much as he is to do and perform certain conditions which are annexed unto the bailment, and also is to take advantage by the performance of them, &c. Tamen quære, for-

forasmuch as the Obligee was not party to the bailment, but the same was made by the woman onely: But the Law had been clear with the Obligee, if the bailment, &c. had been made by the woman, and the Obligee joyntly. See the same case in the Chapter of Grants, &c.

142 And it is to be known, That if a man command a Scribener or other man to write a Deed, viz. an Obligation or other Deed in my name, to T. Downe and he doth so. And after I seal the Obligation, and command the Scribener to keep it until certain Indentures between me and the said Tho. Downe containing certain conditions to be sealed and delivered. And before it is so done, the said Tho. Downe takes the said Obligation out of the possession of the Scribener, this obligation shall not binde the Obligor. 9 h. 6. 37.

143 But if I deliver an Obligation or other writing unto a man as my deed, to deliver unto him to whom it is made when he shal come to York, it is my deed presently; and if he deliver it to him before he come to Yorke, yet I shall not avoid it. And if I die before he come to Yorke, and afterwards he cometh to Yorke, and he delivereth the deed unto him, it is clearly good, a my deed, and that it cannot be, if it were not my deed before my death.

144 And if I deliver a writing unto a stranger as my deed, to deliver unto him to whom it is made upon condition, and he to whom it is made, gets it out of the possession of the bailee before the conditions performed. Yet it is my deed and shall bind me. 10 H. 6. 5. M. 13 H. 4. 8.

145 And if the next avoidance of the Ad-

bowſon of the Church of Dale, &c. be granted unto a man by deed bearing date the firſt day of May, in the fifth year of King Henry the ſeventh, and the ſame deed is firſt delivered as a deed to the party the fourth day of May, the ſame year. And by another deed bearing date the ſecond day of May in the ſame yeare, the next avoidance of the ſame Church of Dale, &c. is granted by the ſame Grantor unto another man, & the ſame deed is delivered as the deed of the Grantor, the third day of May, in the ſame year; in this caſe the laſt Grantee ſhall have the next Avoidance of the ſame Church, and not the firſt Grantee, and yet his deed did bear date before the deed of the ſecond Grantée, but it is becauſe a deed firſt takes effect by his delivery, &c.

15 E. 3. feſty. 93. 146 And in an action brought by a ſingle woman upon an obligation, if the releaſe of one who was her husband be pleaded, &c. the woman may ſay, ỹ at the time of the delivery of the releaſe, he was not her husband, &c. And the jury ſhall be charged to enquire of the time of the delivery, & not of the date, notwithſtanding that the woman in her plea doth not make proteſtation of the date, &c. And it is to be known, ỹ he who pleads a deed, and he againſt whom a deed is pleadtd, may vary from the date of the deed in the time of the delivery. And it is ſaid, That then it behoveth that the date be before the delivery of the deed.

M. 13 E. 3. Aſſ. pl. 116.

29 Aſſ. p. 47. 147 And therefore, If a man be bound in a Recogniſance, and the Recogniſee grant unto the Recogniſor by his deed indented, bearing date before the recogniſance, that if the Recogniſor perform certain conditions contained in the

the ſame Indentures, that then the Recogniſance ſhall be of no force. In this caſe it behoveth the Recogniſor to take advantage of this deed, by averring of the delivery of the ſame deed after the recogniſance entered into.

148 If a man bring an action of debt againſt me upon an Obligation bearing date the ſecond day of May, and declares accordingly, &c. And I plead againſt him an acquittance bearing date the firſt day of May in the ſame year; I ſhall take advantage of this Acquittance by averment, to ſay, that it was firſt delivered as the deed of the party after the date of the obligation, viz. at ſuch a day, &c.

149 And in Replevin brought by a ſingle woman, the Defendant avows by reaſon of a Grant of a rent-charge made unto him by the woman, which grant beareth date the firſt day of May; the woman may avoid this deed, ſaying, that it was firſt delivered the tenth day of May in another year after; at which time ſhe had a husband, &c. And it is to be known, that a man ſhall not plead the delivery of a deed before the date of it: For every deed which hath a date ſhall be intended to be written, the day of the date; But it is no deed before the delivery, and a deed cannot be delivered to take effect, as a deed before it be written. M. 12 H. 6. 1.

150 And therefore if in an Action of Debt brought againſt Executors, who plead a Releaſe of the plaintiff made unto their teſtator, the Releaſe beareth date after the purchaſe of the writ, now if the Executors will ſay that it was firſt delivered in the life of the teſtator, the plea is inſufficient, Cauſa patet. And if the date of the probate of a will made by the Ordinary T. 18 E. 2. Teſts. 160.

dinary be more ancient, then the date of the making of the same will, the will is void as to bring an action upon it, &c. And it is to be known, that if a man plead a release, or other deed, bearing date at such a place, viz. at Dale,
H.22 H.6. 13. in the County of Middlesex, &c. he shall not be suffered to say, that it was delivered at another place, then where it beareth date.

36 H.6.31. 151 And therefore if an action of Debt be brought by Administrators, and they declare, that the administration was committed unto them in London, and the letters of administration bear date in another place, and in another County, then they have declared, the declaration shall abate: And so know, That he who pleads a Deed shall not vary from the place where he bears date. But he against whom a deed is pleaded may say, That it was made by duresse of imprisonment at another place, and in another County where it beareth date.

H.8 E.3.3. 152 And therefore, If in quare ejecit infra terminum, or Terminum qui præteriit, or in Formedon, &c. the Tenant pleads the release of the Demandant, bearing at Dale, &c. and the Demandant say that he was taken by the Tenant at Dale in another County, and then
22 E.3.16. Visne. 7. was imprisoned by him, until he made the deed unto him, this is a good plea: and the matter shall be tryed where the imprisonment is alledged, &c. And so a man may vary from the place which is comprised in the deed, because when a man maketh a deed by imprisonment, he to whom the deed is made may put in the deed what date he will.

153 And it is to be known, That an obligation,

gation, or other deed may be made by Abbot and Covent, out of their Monasterie, for all the Monks may be in another place, so that if the Deed say, Datum apud London, without speaking de domo Capitulari, such a deed is good enough, although that their Monasterie were at Kingstone, &c. But if their deed say, Datum in domo Capitulari, this cannot be but where the Chapiter is, &c. 9 E. 4. 40.

154 And it is to be known, that a Deed cannot have and take effect at every delivery, as a deed. For if the first delivery take any effect, the second delivery is void; as in case an Infant or a man in prison, make a deed, and deliver the same as his deed, &c. And afterwards the infant when he cometh to his full age, or the man imprisoned when he is at large deliver again the same Deed as his deed, which he delivered before as his deed, this second delivery is void. But if a married woman deliver a Bond unto me or other writing as her deed, this delivery is meerly void, and therefore if after the death of her husband, she being single, deliver the same deed again unto me as her deed, the second delivery is good and effectual. M. 1 H. 6. 4. H. 8 h. 6. 3.

155 Notwithstanding that a deed be sufficiently written, viz. without rasure, interlining or new writing upon the old writing, or without any other like fault, and also be sufficiently sealed and delivered as the deed of the party yet if the words in the deed in themselves are not sufficient in Law to binde the party, the deed will avail little or nothing against him.

156 And therefore, if the disseisor enfeoffeth a stran-

a ſtranger by deed, and the words in the deed are ſuch, viz. Know all men, &c. Quod ego, the Diſſeiſor (and names him) per aſſenſum & conſenſum, of the Diſſeiſee (and names him) Dedi & conceſſi & hoc præſenti, &c. unto the ſtranger, &c. and ỹ be done before any entry made by the Diſſeiſee, theſe words per aſſenſum & conſenſum) of the Diſſeiſee ſhall not binde him, but that he may enter, notwithſtanding that it be true, that the Feoffment was made with his aſſent and conſent; for when he is diſſeiſed he hath but a right which ſhall not depart from him, if not by extinguiſhment, and it ought to be at leaſt by deed, & made unto him who at the leaſt hath the poſſeſſion of the Freehold in the ſame Land at the time, &c. And in this caſe the Feoffee had not any poſſeſſion at the time of the feoffment, and the Diſſeiſor cannot enter in the name of the Diſſeiſee, and revеſt the poſſeſſion in the perſon of the Diſſeiſee, for the diſſeiſor himſelf is in poſſeſſion, and he cannot enter upon himſelfe, &c. So it cannot be that the diſſeiſor doth make this feoffment as ſervant unto the diſſeiſee, for it is made in the name of the diſſeiſor, &c.

157 But if the diſſeiſee had entred, and then the diſſeiſor, and the diſſeiſee had joyned in a feoffment by deed, with words of confirmation, Then it ſhall be ſaid, the feoffment of the diſſeiſee, and the confirmation of the diſſeiſor. But if they have joyned in ſuch a feoffment by deed, before entry of the diſſeiſee: And the diſſeiſor had made livery of ſeiſin, now it ſhall be ſaid, the feoffment of the diſſeiſor, & the confirmation of the diſſeiſee, and if a ſtranger had entered in the name of the diſſeiſee, and by

3 H. 6. tcſts. 20.

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his commandment had made a feoffment in the name of the disseisee, et per assensum & consensum, of the disseisee by a deed; containing in it a warrant of Attorney to make livery of seisin, By such feoffment the Disseisee shall be bounden.

158 And it hath been holden, that a man shall be bounden by the speaking of another man, by averment thereof in putting his seale to it, and delivering of it as his deed. As if a man be Obligee in a debt, or covenant by writing, Et ad majorem hujusmodi rei securitatem, inveni A. de B. et C. de P. fide jussores quorum unusquisque, in toto et in solido se obligavit. And notwithstanding that none speaks the same but their principal, yet if the other puts their seals to it, and deliver the same writing as their deed, then they allow of that which the principal speaketh, and so they themselves are become principals, and so it hath been holden, tamen quære. 40 E. 3. Cov. 16. T. 4 E. 1. Obli. 16.

159 And it is to be known, That at this day, a man shall be bounden by putting of his Seal unto a Deed indented, and delivery of the same, and yet the words within the Deed are spoken only by another man. And therefore if a man maketh a lease unto me of my own land by deed indented for years, without saying any more, by this deed I shall be concluded, and yet there is no speech of mine in the deed. And if father and son be, and the Father is seised of one acre of land in fee, and a stranger leaseth the same acre unto the Father by deed indented for years, and the Father dieth. Now the Lessee by this deed shall conclude the heir of the Lessor to say, that his Father died seised 14 H. 6. 22. P. 43 E. 3. 17.

seised in his demeasne as of fee, and yet there is not any speaking in the deed by the Father, &c.

160 And it is said by some men, that if in a deed indented made between two, both speak by words within the deed, but the words which one speaketh be in the first person, & the words which the other speaketh are in the third person. In this case they say, that all the words in the deed, shall be said to be spoken by him who spake in the first person, which saying is little or nothing to the purpose.

161 Now is to shew, where the words Contingat, or Proviso, or such like words in a deed, shall be void, where not. And to that purpose, it is to be known, That when the Habendum, or Contingat, &c. is not repugnant unto the premisses of the deed, but may well stand, then the Habendum, or, &c. shall be good and effeaual, if not that it be in special cases. But if the Habendum, &c. cannot stand with the premisses, but is repugnant to the premisses, then the Habendum, &c. shall be of none effect, but all the deed shall take effect upon the premisses, if not in special cases. M.14 H 8.

162 And therefore if a man enfeoffeth another by deed, and in the premisses of the deed, gives the land unto the Feoffee and his heirs, Habendum et tenendum, unto the Feoffee and his heires for terme of yeares, or for another mans life, this Habendum is void, and the Deed shall take effect upon the premisses notwithstanding livery of seisin be made according to that whole deed: The reason is apparent, for by the premisses of the deed the Feoffor hath given the land unto the Feoffee and his

his heirs, who had an eſtate in feae, nd by the Habendum he hath excluded the Feoffee to have fee in the ſame land, and ſo the Habendum repugnant unto the premiſſes of the deed, and therefore void.

163 And if two men are enfeoffed by deed, to have and to hold unto one of them, This Habendum is void cauſa patet. But if three men are enfeoffed by deed, and in the premiſſes of the deed no eſtate be expreſſed: To have and to hold to one of them and his heirs, he hath a fee-ſimple expectant of the whole land upon the lives of the other two his joynt Feoffees; and all three of them are Joynt-tenants of the whole Free-hold.

164 If lands be given to John and Alice his wife, and unto the heirs of the body of John begotten: and if it happen, that Alice and John die without heirs of their bodies begotten betwixt them, that then the land ſhall remain unto the right heirs of Henry; this Contingat is good, and may ſtand with the premiſes, and therefore is good, &c. And if I. S. be enfeoffed to have and to hold, to I. S. and T. K. and livery of ſeiſin is made unto I. S. according unto the deed, it is bound unto T. K. But if livery of ſeiſin had been made unto T. K. according unto the deed, then he takes by the livery of ſeiſin, and not by the deed. 12 E. 3. varia. 77. H. 5 h. 4. 3.

165 And if a man be enfeoffed by deed of two acres, To have and to hold three acres, and livery of ſeiſin be made unto him according unto the deed in the two acres, the third acre of which there was no ſpeech in the premiſſes of the deed, ſhall not paſſe by the deed: but if livery and ſeiſin be made in this acre, then it

ſhall

shall passe by the livery of seisin, &c. And it hath been holden, that by the words comprised in the clause of warranty, the estate of a man shall be altered, but the same is not Law as I
12 Ed. 3. taile 3. think.

166 And therefore, if lands be given by these words, Sciant, &c. quod ego, &c. dedi D. et I. uxori ejus. et ego the Feoffor, warr. prædict. terras, &c. dict. D. & I. uxori ejus, et hæred. de corpore eorum exeunt. And livery of seisin be made according to the deed, they shall not have any estate but for their lives, &c.

167 But if a man be enfeoffed of one acre of Land, and no estate is expressed in the premisses of the deed. To have and to hold to him and his heirs, this Habendum is good and effectual, because it is not repugnant, for it includes the premisses and more. For if Livery of seisin be made, & no estate expressed to him to whom the livery is made, he hath an estate for his life, &c. And by the Habendum he hath an estate in fee, which includes the premisses of the deed and more, &c. So shall it be if an estate for years, or for life, or for the life of another be expressed in the premisses of the deed; To have and to hold to him and his heirs, &c.

H. 45 E. 3. 20. 168 And if an estate tail had been expressed in the premisses of the Deed: Now by this Habendum it hath been holden by some men, The Feoffee shall take nothing, but the Habendum is void, and the deed shall take all its effect upon the premisses, (which is not law) (as I think) But that the Habendum shall
P. 5 H. 5. 6. take effect to such intent, viz. That the estate tail shall be executed in the Donee, by force of the

the premisses of the deed, & the fee-simple shall be in him expectant upon the estate tail by force of the Habendum, &c.

169 If land be given by deed, Reginaldo, & K. vx. ejus, & hæred. eorum & aliis hæred. dict. Reginaldi, & si dict. hæred. de dict. Reginald. & K. obierint sine hæred. de se procreat. this is a good estate tail: And the reason wherefore these words in the close of the deed are effectual, is, because they are not repugnant unto the premisses, for their heirs are not excluded to have the land by these words, but it is by them declared what manner of heirs shall have this land: and so they may stand together, &c.

170 And it hath been holden by some men, that if lands be given by the premisses of a deed unto two men and their heirs, To have and to hold to them, and to the heirs of their two bodies begotten, that the Donées have estate in tail, and also fee-simple expectant upon the estate tail (which is not Law as I conceive) for they have a joynt estate for their lives, and are Tenants in common of the estate tail, and they have not any fee-simple, and the reason is apparent, &c. Lib. Ass p. 14.

171 And if Lands be given unto a man and his heires, if he hath issue of his bodie, that then it shall revert unto the Donor, this is a good estate tail. And if lands be given by deed, by these words, Dedi, &c. totam terram meam, &c. Habendum et tenendum, &c. sibi et hæred. sui, si hæred. de carne sua habuerit. Et si nullos hæredes de carne sua habuerit, revertatur dict terra, ad me, the Donor, et ad hæredes meos, this in an estate in taile. 37 Ass. p. 15. 39 Ass. p. 20.

And if land be given by deed, viz. D. dedit I. et A. uxor, ejus et uni hæred. de corpore suo legiti, procreata et uni hæred. ipsius hæredis tantum; it hath been holden the same as an estate in tail, tamen quære.

172 And it hath been holden, if land be given unto a man by deed, and to his heirs of his body issuing: and if his first issue die without heir of his body issuing, that then the land shall revert unto the Donor, and the Donee hath issue three sons, and dieth, and his eldest son dieth without issue, notwithstanding these words, his middle son shall have this land, &c. And the reason is, because that these words in (if his first issue dye without heir of his body) are repugnant unto the word going before, tamen quære. For some men think contrary, for that these words are but a declaration, which issue of the body of the Donee shall have the land, &c.

173 And if land be given by deed unto I. S. Et si contingat ipsum obire sine hærede de corpore suo, quod tunc revertat, to the Donor and his heirs, without any Habendum in the deed, and livery of seisin is made according to the deed as ought to be intended: In this case the Donee hath an estate in tail, notwithstanding that it is not given unto him and his heirs. For the Stat. of Westm. 2. cap. 1. wils, Quod voluntas Donatoris secundam formam in charta doni sui manifeste expressam, de cætero observetur.

174 And if lands be given unto I. S. and T. K. in the premisses of the deed, and no estate is expressed in the premisses of the deed. To have and to hold unto I. S. for life, the remainder unto

unto T. K. and his heirs, this Habendum is good, and effectual, because it is not repugnant unto the premisses, but makes a declaration of the premisses, how they shall take the land, &c.

175 And if one acre of land be given unto two by deed, To have and to hold one moitie to the one and his heirs, & to have and to hold the other moitie unto the other, and the heirs of his body issuing, the Habendum is good and effectual: But if the premisses of the deed are, of two acres, and the Habendum is but of one acre, and the estate of none of them is enlarged by the Habendum, it is a void Habendum, because that it excludes the Feoffees of part of that which was given.

176 As put the case, White acre and Black acre are given unto I. S. and T. K. and unto their heirs, To have and to hold white acre unto them, and unto their heirs, this Habendum is void: But if this acre be warranted unto them, this warranty is good, notwithstanding it doth not extend unto all the land which was given, or unto all the persons as were enfeoffed, &c. Or if the warranty be made by one of the Feoffors, it is good enough.

177 And if land be given unto two for terms of their lives in the premisses of the deed, To have and to hold the moitie of this land to them and unto their heirs, this Habendum is good, because it is not repugnant; for by the Habendum their estate is enlarged in the moitie, so as they have a Fee-simple in this moitie, and a Free-hold in the other moitie, &c. And if land be given unto husband and wife,

To have and to hold, &c. unto the husband for life, and unto the wife and her heirs, the Habendum is good and effectual, &c.

P. 22 E. 3. 4. 178 Now is to shew, to what person words incertain contained in a deed shall have relation: And for that, know, That if an Abbot make a grant by such words, viz. A. D. Abbot of such a place, &c. grant all, quandam annuam pensionem T. D. ad rogatum I. de Exon. illam pensionem quam idem I. de Exon. habuit pro termino vitæ suæ in festo natalis Domini et Pasch. percipiend. quousque sibi de competento Beneficio fuerit provisam, &c. These words, &c. (quousque sibi) shall have relation unto the Grantee.

M. 9 H. 6. 35. 179 And if a deed be made in this form, viz. Noverint universi per præsentes nos de com. assensu, &c. Dedisse, &c. W. H. et hæredibus suis unum Toftum quod jacet, &c. Habendum, &c. reddend. nobis et successoribus nostris xii. d. et pro hac concessione prædict. W. H. renunciavit totam Communiam suam cum diversis averiis nostris quam habet et habendum consuevit cum diversis averiis nostris, &c. These words in the deed (renunciavit totam communiam suam) shall have relation unto the Abbot and Covent in consideration of the premisses in the deed, tamen quære.

180 And if a man by his Obligation doth acknowledg himself to be endebt unto the Obligee in twenty quarters of corn, to be delivered unto the Obligee, at such a place, &c. and to perform the same he, viz. the Obligor acknowledgeth himself to be bounden in 100 shillings, and doth not say, To whom he doth acknowledg himself to be bounden. In this case it

it shall be taken, that he is bound unto the obligee of the corn in consideration of the premises of the Obligation.

181 If a man seised of land, in fee thereof, enfeoff me by deed, Habendum et tenendum mihi et hæred. meis. And moreover, by the same deed grants the same land unto me, and hæred. prædict. this word (prædict.) shall have relation unto my heirs: But if a rent be granted unto I. S. and T. K. to perceive unto them and their heirs, and doth not shew whose heirs, the Grantees have but an estate but for their lives. M. 45 E. 3. taile 14. 20 H. 6. Fests 8. 19 H. 6. 73.

CHAP.

CHAP. II.

Feoffments.

182 NOw is to speak of Feoffments. And forasmuch a Feoffment cannot take effect without livery and seisin, something shal be said what persons may make livery of seisin, and what persons may take by livery and seisin, and how, and in what manner and forme livery of seisin ought to be made. And when the livery of seisin shall be void, for the presence of man or woman upon the land, who will not agree and assent unto the livery of seisin, &c. And when by livery of seisin in one acre, many acres shall passe, and when the Feoffees shall have an estate of inheritance, without speaking of their Heirs or their Successors.

183 And it is to be known, That there are some persons who may make livery of seisin in their own right, and also as servants unto others: And some persons who cannot make livery of seisin in their own right, but as servants unto others, they may. And some persons may make livery of seisin by themselves

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in their own right unto ſome perſons, and unto others they cannot, and ſome perſons ſhall make livery of ſeiſin, and take by the ſame livery, &c.

184 And it is to be known, That all ſuch perſons as may grant by themſelves, may make livery of ſeiſin by themſelves, viz. in their own right, and as ſervants unto others, in the ſame manner and form as they may grant, &c. Mutatis mutandis, &c. And as to ſuch perſons ſee the Chapter of Grants, mutatis mutandis, &c.

185 And as to ſuch perſons as cannot make livery of ſeiſin in their own right, but as ſervants unto others, may know, That a Monk, Fryer, Canon profeſſed, nor a married woman cannot make livery of ſeiſin by themſelves, viz. in their own right: and if they do make any livery of ſeiſin in their own right, it is void, and the reaſon is, becauſe that ſuch perſons profeſſed in Religion, cannot have any land in their own right, unleſſe it be ſevered from the ſame houſe of Religion, &c. 9 E. 3. 28.

186 And notwithſtanding that a married woman may be ſeiſed in her own right with her husband, yet livery of ſeiſin made by her alone without the agreement of her husband is void, inſomuch that her husband and ſhe may have an aſſiſe notwithſtanding ſuch livery of ſeiſin, if the husband be ſeiſed of the freehold in the right of his wife: But in ſuch caſe, If the husband were ſeiſed in his own right, then notwithſtanding ſuch livery of ſeiſin made by the wife, he ſhall have an Aſſiſe in his own name, &c.

187 But if a Monk or other perſon profeſſed P. 10 E. 4. 46.

sed in Religion, or a married woman make livery of seisin according to the deed of a person able to make a feoffment in his own right, and by Letter of Attorney made by the same Feoffor so to do, then such feoffment is good, because that the Feoffee in such case is not in the land by him that makes the livery of seisin, but it is in the land by the Feoffor. But if they do not make such livery of seisin according to their warrant of Attorney to make livery of seisin. Then in some cases it is a livery unto the Feoffor, &c.

M. 11 H. 3. 40 Ass. p. 38. 188 And therefore, if a Monk, or, &c. hath a warrant of Attorney to make livery of seisin upon condition and he make livery of seisin without condition, this is a disseisin unto the Feoffor: And if the warrant of Attorney be, to make livery of seisin after the death of a stranger, and he make livery of seisin in his life time, this is a disseisin unto ỹ feoffor, and if livery of seisin should be made unto two, & he make livery of seisin but unto one of them, and doth not make livery of seisin according to the deed, this is a disseisin unto the Feoffor; and ỹ reason in these cases is, because he hath disobeyed the commandement of his Master.

12 Ass. p. 24. fest 82. 40 Ass. 86. p. 38.

189 But if he, viz. the Attorney do the command of his Master and more, yet shall it be good, for that which hath reference unto his commandement, and void for the rest, if not, that it be in special cases. As put case, the warrant of Attorney be to make livery of seisin unto one man, and the Attorney make livery of seisin unto two, it is good to him to whom the warrant doth extend, and void unto the other. And so is it, If the warrant of attorney

torney be to make livery of seisin of black acre, and the Attorney make livery of seisin of white acre and black acre, in this case all is not void, for it is good for black acre, and the reason is, because the Attorney hath done all the commandement of his Master, and more.

190 As if I give licence unto a man to take my white horse, and he takes my white horse and my black horse, in this case he is trespasser in taking the black horse, but not in taking the white horse: and the reason in this case is, because it is a licence in fact, and he hath done all, and more. &c. But if Lessee for years be of a house, and the Lessor enters into the house, to see if waste be committed or not, that is lawfully done: But if at the same time the Lessor carrieth away any of the goods of the Lessee, against the will of the Lessee, in this case the Lessor shall be punished for his entry, and yet the same was lawful at the beginning, and the reason is, because that when the Law gives a Man a liberty unto one certain intent, and he use this liberty unto another intent, or misuseth it, he shall be a Trespasser from the beginning, if not, that it be in special cases, &c. T. 15 H. 4.

191 And therefore, If a man enters into a Tavern to drink, and when he hath drunke, he carrieth away the Cup without the will of the Taverner, now he shall be punished for his first entry: For it cannot be intended that his entry was to any other intent, but to steale the Cup, for the Law cannot judge his intent against his Act done, ex post facto: The same Law is, If a distresse be taken, for doing damage: or for a Rent-Service,

and

and the same be misused; Quære, if a Distress be taken for a Rent-charge, and be misused: And so is the difference between a licence in Fait, and a licence in Law, &c.

M. 5 H. 7. 11.

22 Ass. p. 29.

192 But if a warrant of Attorney be made to make livery of seisin unto two men, and one of them dyeth before the livery of seisin made, and the Attorney makes livery of seisin according unto the deed unto the other Feoffee who is living, it is good unto him for all the land. And so is it one of the Feoffees be professed Fryer before the livery of seisin made, Causa patet, &c. And it hath been holden, that if a warrant of Attorney be made to make livery of seisin without condition, and the Attorney makes livery with condition that it is a disseisin unto the Feoffor, tamen quære, because that the Attorney hath done all the commandement of his Master, and more.

H. 22 H. 6. 42.

P. 10 E. 4. 5.

21 E. 3. 27.

193 And it is to understand, That there are some persons who may make livery of seisin in their own right unto some persons, and unto other persons they cannot, notwithstanding that such persons are of ability in Law, to take livery of seisin by force of feoffments of other men able in Law to make feoffments. And therefore, if two Joynt-tenāts be, one of them cannot enfeoff his companion, because he cannot make livery of seisin unto him: But if two Coparceners be, one of them may enfeoff the other of his part and portion; and if two Coparceners be, one of them may release unto the other, and it shall be good and effectual to give an estate in his part to the releasee.

P. 38 E. 3. 12.

194 And if a contract of marriage be between

tween a man and a woman, yet one of them may enfeoff the other. For yet they are not one person in Law, in so much as, If the woman dieth before the marriage solemnized betwixt them, the man unto whom she was contracted, shall not have the goods of the wife as her husband, but the wife thereof may make a will without the agreement of him unto whom she was contracted, &c.

195 And it hath been holden, That if a man contract himselfe unto a woman, et postea cognovit eam carnaliter, and afterwards he doth enfeoff the same woman of a carve of land and puts her in seisin thereof, and afterwards marrieth her in facie Ecclesiæ, that this feoffment is void, because that it is made post fidem datam, et carnalem copulam, et sic tanquam inter virum et uxorem: for that the marriage is subsequent, &c. But at this day, if such a feoffment be made, it is good enough: But after the marriage celebrated between a man and a woman, the man cannot enfeoff his wife, for then they are as one person in Law. M. 16 H. 3. fests, 117.

196 But in divers cases a man may be a means to make a thing passe unto his wife, the which shall not immediately passe from him. And therefore if a man enfeoffeth a married woman, and makes a letter of Attorney unto the husband to make livery of seisin according to the deed, and he make livery of seisin according to the deed, it is a good feoffment; for the husband is but a means to convey the free-hold to the wife, for by this are done, no free-hold doth passe out of his person, &c.

197 And it hath been said, That if two

Joynt-

Joynt-tenants be in fee and one of them leaſe that which belongeth unto him unto a ſtranger for years, the remainder for life in tayle, or in fee, to his companion: And livery of ſeiſin is made to the Leſſee for yeares accordingly; that this remainder is good. But it ſeemeth the Remainder is not good, for it had not been good, if livery of ſeiſin had not beene made unto the Leſſee for yeares: So it appeareth, That the Remainder ſhall paſſe by the Livery of Seiſin, and one Joynt-tenant cannot make Livery and Seiſin unto his companion, &c. Ideo quære. And if a man diſſeiſe me of a Carve of land, he cannot enfeoffe me by matter in deed, becauſe my entry is lawful upon him, &c.

198 And it is to be known, that ſome make livery of ſeiſin, and take by the ſame livery of ſeiſin, but then they do not make livery of ſeiſin in their own right, or otherwiſe they doe not take by the livery of ſeiſin in their owne right, if not, that it be in ſpecial caſes, &c. And therefore if land be leaſed for life unto I. S. the Remainder unto T. K. in fee, and a Letter of Attorney is made unto T. K. to make livery of ſeiſin, and he make livery of ſeiſin unto the Leſſee accordingly, in this caſe he takes by ỹ ſame livery of ſeiſin which he himſelfe made, but not of his own Grant, for he made the ſame as ſervant unto his Grantor.

199 And it is ſaid, that if a man enfeoffeth two by deed, and makes a Letter of Attorney unto one of them to make livery of ſeiſin, and he makes livery of ſeiſin according unto the deed unto his companion, he himſelfe who

who makes the livery of seisin, shall take by the same livery of seisin, because he shall be in by the Feoffor, and not by himselfe, &c. And if a man seised of land in the right of his wife, lease the same land for life reserving rent, and makes a letter of attorney unto the wife to make livery of seisin, and she makes livery of seisin accordingly, and the husband dieth, and the wife accept the rent yet she shall have Cui in vita, for this acceptance cannot make the lease good, insomuch as she is a stranger unto the Lessee, for the Lessee took nothing by the wife notwithstanding that she made livery of seisin, for she made that but as servant unto her husband, &c. T. 26 H. 6.

200 But if a man lease lands for life, and the Lessee thereof enfeoffeth a stranger, and makes a Letter of Attorney unto his Lessor, to make livery of seisin accordingly, and he makes livery of seisin, in this case it hath been said by some persons, That the Lessor may enter upon the Feoffee for a forfeiture, notwithstanding the Livery of Seisin made by him, for they say that the Feoffee took nothing by him, for the Lessor had nothing to do upon the land, if not to see whether waste were done, or to distrain for his rent and services, if they were behinde. And if the Lessor be vouched, & he hath not other possession in the same land, after the title of the Writ, in which writ he is vouched; but by making of livery of seisin by force of the Letter of attorney, the demandant may well counterplead the voucher, &c.

201 And if my Disseisor be disseised, and brings assise of Novel Disseisin, I may well

give

give in evidence this disseisin, and yet I shall have an assise against my Disseisor, &c. And against that it may be said, that the Lessor shall not enter for the forfeiture, because he is party unto the wrong, viz. the discontinuance of the reversion, for nothing of the free-hold passeth unto the Feoffee, if not by the livery of seisin, and the Lessor himselfe made the livery of seisin, which is an agreement of him, that the feoffee shall take by force of the feoffment, and he who is party to the doing of wrong shal not take advantge thereof.

M. 18 H. 8. 5. 20. If Lessor and Lessee for yeares, &c. joyn in the cutting down of 20 Oaks growing upon the lands leased, the Lessor shall not punish the same in an action of waste, &c. And the heir who is party unto the death of his father, shall not have an appeal thereof; and if the issue in tail disseise the discontinuance of his father, and thereof enfeoffeth his father, and the father dieth seised, and the issue in tail enters, he shall not be remitted, &c.

20. And if Lessee for life of an acre of land lease the same acre unto his Lessor for years, the remainder unto a a stranger in fee, and makes livery of seisin unto the Lessor, it is no forfeiture. And if Tenant for terme of life enfeoffeth the wife of his Lessor of the same land, and makes a letter of Attorney unto his Lessor to make livery of seisin, which is made accordingly, it is no forfeiture, &c. And it is to be known, that if a man makes a deed of feoffment of his own land unto himself and unto a stranger, and make livery of seisin unto the stranger according to the deed, all shall passe unto the stranger, and nothing unto himselfe,

for

for that he cannot give unto himselfe, as this case is, &c.

204 If a feoffment be made unto a Monk professed, and unto a stranger by deed; and livery of seisin is made unto the stranger according to the deed, all passeth unto the stranger: But in the same case, if livery and seisin be made unto the Monke according to the Deed, and not unto the stranger, nothing shall passe thereby. And if a man makes a deed of feoffment unto two, and one of them dieth before livery of seisin made according to the deed, and afterwards livery of seisin is made unto him who survives according to the deed, all passeth to him.

205 And unto divers respects a man shall take by a livery of seisin which he maketh in his own right, but then he shall not take in his own right: if not that it be in special cases. And therefore if Dean and Chapter are, and one of the Chapter is sole seised in fee in his own right of land, and thereof by deed enfeoffeth the Dean and Chapter, and makes livery of seisin according to the deed, in this case the Feoffor giveth and taketh by the same gift in divers respects. And so shall it be of Major and Comminalty, if one of the Comminalty be seised of land in his own right, and thereof enfeoffeth the Major and Comminaltie. And it is to be known, that such persons as are in possession of lands for years, or for life, or, &c. cannot take livery of seisin of the same Land, &c. H. 22 H. 6. 43.

206 Now is to shew, How, and in what manner livery and seisin ought to be made. And it is to be known, that of a rent recovered, 31 P. 40 E. 22.

It

If the Sheriff put the party who recovereth in seisin, by the herbs growing upon the land out of which the rent is issuing, or by a bough or a twig of a tree growing upon the land out of which a rent is issuing, or by distresse of Cattel levant and couchant upon the same land, or by a clod of the same land, this is a sufficient seisin, notwithstanding that the day of payment of the rent be not yet come: But then the party cannot drive such beasts with him out of the same place, &c.

3 E. 3. F. N. Ass. 414.

207 And if a man come unto a rent by purchase, &c. Then it behoveth that he be seised of such things which is of the nature of the rent, and not of other things, if not, that it be in special cases.

208 And if a man recovers land, he may enter into the land recovered, if his demand be certain, as of one acre, three acres, or a carve of land, &c. or he may sue execution by Habere facias seisinam, and then the Sheriff may put him in seisin by delivery unto him a bough, or a twig of a tree, or hearbs growing upon the land, or by delivery unto him of a clod of the same land in the name of seisin, &c. and if the recovery be of a house, then the Sheriff may put him in seisin by delivery unto him the ring of the door; Or otherwise hee may open the house-doore, and say to him, that he enter into the house, and take seisin thereof by force of the recovery.

T. 49 Ed. 23.

39 Ass. p. 12.

209 And it is to be known, That the manner for to deliver seisin of land by force of a feoffment, is to remove all persons off the land, and the one being upon the land in the presence of all the persons that are there, to shew the cause

cause of their coming: and then if the feoffment be by deed, to read the Deed in English, and the deed being read, the Feoffor to enter on the land, and take a clod of the same land, and deliver the same with the deed, as his deed unto the Feoffee in the name of seisin of the same land, to have, hold, and enjoy according unto the purport of the same deed, &c.

210 And so, and in the same manner shall it be done if livery of seisin be to be made by a stranger, by force of a warrant of Attorney, Mutatis mutandis, &c. And if a feoffment be made by word, it appeareth out of w is before, how, & in what manner livery of seisin shall be made; and also if a feoffment be made of a house, it appeareth out of the premisses, how, and in what manner livery of seisin shall be made: And if a feoffment be made of a house or land by deed, and the Feoffor in coming to the house, or land with the feoffee and others, &c. read the deed of feoffment, and afterwards goeth unto the house or land, & delivereth seisin accordingly, it is good, notwithstanding that the feoffor remain upon the land or in the house all the time, and takes the profit, at the sufferance of the feoffee.

211 And if a man lying upon his death-bed in his house, makes a charter of feoffment of the same house, and delivereth the same unto the Feoffee, saying, have and hold this house according to the purport & effect of this charter, and the feoffee by force thereof taketh seisin, notwithstanding ỹ the feoffor continues in the same house, and there dieth, it is a good livery of seisin and a good feoffment. 17 Ass. p. 61. 11 Ass. p. 6.

43 Ass. p. 20.

212 And if a man lying sick within a Manor, selleth the Manor unto a stranger, and saith unto him, that he wils, that he shall take seisin presently, and commandeth all his servants to be attendants upon him as their Lord and Master, and thereupon the Vendee taketh seisin, and perhaps giveth unto the servants twenty shillings to drink, and the Tenants of the Manor attorn unto him, and the Vendee goeth from the Manor about his business, and the Feoffor dieth upon the same Manor, yet it is a good livery of seisin according to the words of the estate, &c. And it is to be known, that livery of seisin may be made of land, or of a house within the view.

213 And therefore if I deliver a deed of feoffment unto you, and shew unto you the lands or tenements, and say unto you, That I will that you enter into the same lands or Tenements, to have and hold according to the purport and effect of the deed, and deliver unto you the deed as my deed, and you enter into the same lands, &c. this is a good feoffment, &c.

214 And if a man make a deed of feoffment unto Alice at Style, and afterwards the Feoffor and the said Alice come unto the Church dor to be married, and the Feoffor delivereth the same deed unto Alice, and sheweth unto her the Tenements which are comprised in the deed, and saith unto her, that he will, that she shall have the same tenements which she saith, and afterwards they are married together, and the husband ever after claimeth not any thing therein, but in right of the said Alice, this is a good feoffment notwithstanding that Alice doth not enter, for the entry of the husband is sufficient for her,

P. 38 E. 3. 5.

215 And

215 And it is said, that if a man makes a deed of feoffment in my name of land whereof I am seised, and cometh unto me, and prayeth me that I would deliver unto him seisin of the same land contained in the deed, according unto the purport and effect of the deed, and I take the deed, and read it, And then I say unto him, Sir, I deliver unto you this deed as my deed in the name of seisin of all the lands, tenements, and other things compriſed in the deed, To have and to hold according unto the purport and effect of the deed, and by the force thereof the Feoffee preſently enters, this is a good feoffment, &c. P. 53 E. 3. Feſts 51.

215 And it hath been ſaid, That if there be Father and Son, and the father is ſeiſed of Land, whereof he enfeoffeth his ſonne, and the ſon after livery of ſeiſin made unto him, ſuffereth his father to occupie the ſame land, who is contented to occupie the ſame at the will of the ſon, and afterwards the ſon cometh unto the pariſh Church of the town where the lands lie, and there in the hearing of the pariſhioners ſaith unto his father, Father you have given unto me lands, and declareth the certainty thereof, &c. and as fully as you have given them unto me, I do give them back unto you, and the father by force of theſe words doth preſently enter into the lands, that this is a good feoffment, which is not law at this day, as I think, &c.

217 But a man may aſſign dower unto his wife at the Church door in one County, of lands in another County, without deed; the reaſon is, because that the aſſignment of dower cannot be made before the contract be finiſh- M. 40 E. 3. 43.

ed by them at the Church doꝛ, and then they are but one perſon in Law, &c.

218 And it is to be known, that ſometimes livery of ſeiſin ſhall be void by the being of another perſon upon the Land and Tenements whereof the livery of ſeiſin is made, who is no party to the livery of ſeiſin. And as unto that, know, That when two men come upon lands & tenements together to claim the ſaid lands and tenements, & one of them claimeth by one title, and ỹ other claimeth by another title, the law doth adjudg the poſſeſſion in him who hath rightful title unto the poſſeſſion: Foꝛ if a Diſſeiſoꝛ be of one acre of land, who dieth ſeiſed of the ſame land in fee, and the heire of the diſſeiſoꝛ, and the diſſeiſee come upon the ſame land together to claim the ſame land, the law will adjudg the poſſeſſion of the land in the heir of the diſſeiſoꝛ, and not in the diſſeiſee, yet ỹ diſſeiſee habet majus jus ad rem, viz. in jure, to have the land, then the heire of the Diſſeiſee hath: But the heir of the Diſſeiſoꝛ hath majus jus in re, viz in poſſeſſione, to have the land, then the Diſſeiſee hath. And thereforꝛe, &c.

219 And if a man enter into my lands, by wꝛongful title, and I being there, he doth enfeoff a ſtranger thereof, and doth deliver unto him ſeiſin, it is void, foꝛ he cannot give ſeiſin befoꝛe he himſelf hath ſeiſin, and he hath not ſeiſin at the time of the livery of ſeiſin, foꝛ the Law will adjudge the poſſeſſion in me, who have right unto the poſſeſſion, becauſe that I am pꝛeſent at the time of the delibery of ſeiſin.

220 And if two Joynt-tenants are in fee, and

and one of them doth enfeoff a ſtranger of the whole againſt the will of his companion being upon the land, by this feoffment, but the moitie paſſeth: Quia p te. And if the Leſſor for years entereth upon the Leſſee, and againſt the will of the Leſſee, the Leſſee being upon the land, the leſſor doth enfeoff thereof a ſtranger by deed, this feoffment availeth nothing as a feoffment, for a feoffment cannot take effect without livery of ſeiſin, and the Leſſor cannot make livery of ſeiſin againſt the will of the Leſſee, the Leſſee being upon the land, becauſe the law doth adjudge him in poſſeſſion, &c. and without a poſſeſſion a man cannot make livery of ſeiſin, &c. 2 Aſſ. p. 1. H. 2. 3, 4. 5 Aſſ. p. 8.

221 And that is the cauſe, That if a leaſe for years be of land, and the Leſſor grant the reverſion unto a ſtranger, & the Leſſee attorn, that the free-hold ſhall paſſe without livery of ſeiſin, becauſe that the Leſſor cannot make livery of ſeiſin, without wrong done unto the Leſſee, &c.

222 But if Leſſee for yeares enfeoffeth a ſtranger, the Leſſor being upon the land, yet the land ſhall paſſe by the feoffment: but perhaps if he continue upon the land, claiming the ſame after the feoffment, the ſame doth counterbail an entry for a forfeiture. And the reaſon wherefore it paſſeth by ſuch feoffment is, becauſe ỹ the Leſſor had nothing to do to meddle with the poſſeſſion of the land during the Terme. But he may come and for whether waſte be done, or for to diſtrain for his rent if it be behinde, &c.

223 And if husband & wife purchaſe land joyntly in fee, and the poſſeſſion be executed in them H. 11 E. 3. 6.

them accordingly and afterwards the husband doth enfeoff a ſtranger in fee, and the wife ſaith that ſhe will not agree thereunto, nor go off the land, but continueth there at the time of the livery of ſeiſin, notwithſtanding the ſame; all the land doth paſſe by the feoffment.

T. 12 E. 3. 224 But if Major and Comminaltie be joyntly ſeiſed of any land in fee, and the Major againſt the will of the Comminaltie doth enfeoff a ſtranger of the ſame land, the Comminalty being upon the land when livery of ſeiſin is made; nothing paſſeth by this feoffment, &c.

,4. Feſts, 29.

225 And if the Deane make a feoffment without the aſſent of the Chapter, in his own name of land in which he is joyntly ſeiſed with the Chapter, the Chapter being upon the land at the time of the livery of ſeiſin, nothing ſhall paſſe by this livery of ſeiſin. But if an Abbot make a feoffment without the aſſent of the Covent in his own name of land parcel of the Monaſterie, the Covent being upon the land at the time of the livery of ſeiſin, yet the land ſhall paſſe by this feoffment, &c.

226 Now is to ſhew; When by livery of ſeiſin of one acre of land, or of a parcel of an acre of land, or of one Tenement in the name of many acres, or tenements, all ſhall paſſe: And as to that it is to be known, that if a feoffment be made generally of all the land which the Feoffor hath within the County of Middleſex, and he hath lands in twenty ſeveral places within the ſame County, & makes livery of ſeiſin in one acre, or in one houſe, in the name of all the lands & tenements which he hath in the ſame County. By this livery

9 H. 7. 25.

of

of ſeiſin all paſſe, &c. inſomuch as if ſuch a feoffment be pleaded by deed, of an hundred acres, and the Feoffor ſaith, as unto twenty acres nothing paſſeth by the deed, it is no good plea, Cauſa patet, &c.

227 But by livery of ſeiſin in one County, the Lands and Tenements in another County will not paſſe. Yet if the Scyte of the Manor of Dale be in the County of Eſſex, and parcel of the ſame Manor doth extend into the County of Middleſex, and a feoffment be made of the Manor of Dale, and livery of ſeiſin is made of the Scyte of the Manor which lyeth in the County of Eſſex; by this livery of ſeiſin, the parcel of the Manor which lyeth in Middleſex ſhall paſſe, becauſe it is parcel of the thing, viz. the Manor, of which the feoffment was made, The which Manor is but as one thing to ſuch purpoſe, &c.

228 But if a feoffment be made of the Manor of Dale in Dale, which Manor extends into Dale and Sale, & livery of ſeiſin is made accordingly in Dale. By this feoffment nothing paſſeth but that which is in Dale, becauſe that the feoffment is not of more but of that which is in Dale, and the livery of ſeiſin is made in Dale, and not elſe-where, &c. T. 9 E 4. 17.

229 And it is to be known, That if a man be diſſeiſed of two acres in ſeveral Counties, and the Diſſeiſee entereth into one acre in the name of both acres, yet this entry ſhall not extend unto the acre lying in another County, in which acre the entry was not made.

230 And if in an Aſſiſe, the Plaintiff make his plaint of the Manor of Dale, and the Tenant plead a feoffment of parcel of the ſaid T. 1 H. 7.

Manor by deed, and sheweth a deed of another Manor, viz. of the Manor of Sale, it is not to the purpose, to make the same passe by ỳ same deed, for the Manor of Dale cannot be the Manor of Sale, nec è converso. But if he had pleaded a feoffment of the moitie of the Manor of Dale by the name of the Manor of Sale, it should be otherwise, because that the Manor of Dale may be known by the name of the Manor of Sale, &c.

231 And it is to be known, that if a man be seised of Land, and also of a rent-charge issuing out of land which lyeth in the County in which the land whereof he is seised is, or in another County and giveth the land and rent by a deed, bearing date in the County where the land is whereof he is seised, & livery of seisin is made of the land, and ỳ deed delivered as his deed, yet the rent shall not passe before attornment of the Ter-tenant, out of which it is issuing: But if the Tenant attorn in the life of the Grantor, & Grantee, then the rent shall passe, notwithstanding that the Tenant who doth attorn be another man than he ỳ was Ter-tenant at the time of the grant, and notwithstanding that the deed beareth date in another County, then the Land is, out of which the Rent is issuing.

232 And it is said, That if a man be disseised of two acres of land in one County, and he entereth into one of the acres, claiming the said acre only, and maketh a deed of feoffment of both acres unto a stranger, and maketh Livery of seisin according to the deed in the acre in which he entered that both acres shall passe unto the Feoffee, because that this claime is nothing

nothing to the purpose, because he had right of entry before, &c. And both acres are in one County, so as his entry into one acre shall be entry into both acres, notwithstanding the claim, &c. Against which it may be said, that P. 9. 7. 25. the acre into which the Feoffor did not enter, shall not passe by the feoffment; for when a man is out of possession of a thing severable, he is at liberty to continue his possession in it, in which part he will, and shall not be compelled for to re-continue possession unto all, in despight of him.

233 And therefore if a man be disseised of two acres being in one County, and the Disseisor bring Assise of one of them, as he may, and recovereth the same acre, and entereth into it by force of his recovery, the entry into this acre shall not be said an entry into the other acre, notwithstanding ỹ his entry was right full into the same acre, and notwithstanding that both acres are in the same County, if not that he enter into the same acre, in the name of both acres, &c. Then in the principal case, the Disseisee was out of possession of both acres, and he may suffer ỹ Disseisor to continue possession in them, if he will: And therefore insomuch as the acres are severable, and the Disseisee hath not entered but into one of them, claiming the same acre onely, this entry cannot give him possession in both acres, and notwithstanding ỹ after his entry he hath made a deed of feoffment of both acres, & hath delivered seisin according to the deed in the acre in which he entered, claiming ỹ solely, yet that cannot be said an entry into the other acre. because the circumstance of this feoffment doth

doth not give unto the Feoffor possession of the acre in which the livery of seisin was made, for the possession of that was in the Feoffor, by his entry made before, and so, &c.

234 And if Lord and Villein be, and the Villein purchase two acres of lands in fee lying in one County, and possession of them is executed to him accordingly, and the Lord of the Villein entereth into one acre, not claiming the other acre, and afterwards makes a deed of feoffment of both acres unto a stranger, and makes livery of seisin in the acre in which he hath entred according to the deed, yet the acre into which he did not enter, shall not passe by the feoffment, &c.

235 And yet a man may enter as servant to the Lord, and by his commandement, and it shall be good; but notwithstanding that the Feoffee doth so, yet he cannot take that by the feoffment; for a man cannot make livery of seisin before he himself hath possession, and at the time, viz. when he made livery of seisin he had not possession but onely of the acre in which he entred, &c. The same law is, when a man hath title to enter into two acres for a condition broken, &c. mutatis mutandis. And so shall it be, where a man hath title of entry into two acres of lands holden of him, because they are alienedin Mortmain, &c.

236 Now is to shew when the Feoffees shall have an estate of inheritance, without speech of their heirs or successors. And as to that, know, that it is a common rule in law, That if lands be given in Frank-marriage unto a man with the kinswoman of the Donor of the whole blood by these words (Frank-marriage)

marriage) they have an eſtate in ſpecial tail if they inter-marry: And if in ſuch a caſe the husband dyeth, and the ſame Donor giveth more lands in Frank-marriage unto a ſecond husband of the ſame woman, this is a good Frank-marriage.

237 And a gift in Frank-marriage made after the marriage is good, and yet ſome have ſaid the contrary, and their reaſon is, becauſe that the gift in Frank-marriage ought to be made for advancement of the Kinſwoman of the Donor by marriage, and therefore ſuch a gift made after the marriage cannot be intended to that purpoſe. Againſt which it may be ſaid, that ſuch a deed made to ſuch perſons after the marriage between them, may be the cauſe of the marriage as well as if ſuch a gift had been made unto them before the marriage. H. 4 E. 3. 8.

238 And if after ſuch a gift in Frank-marriage, and after the marriage ſolemnized between the Donées, the Donees are divorced at the ſuit of the husband. In this caſe the woman ſhall hold the whole land, and the husband ſhall have none of it. But if ſuch a divorce be in other gifts, in ſpecial tail by expreſs words, yet they ſhall hold the ſame Lands ſo given joyntly, during their lives, &c. 12 Aſſ. p. 22.

239 And if Lands or Tenements be divi-ſed by Will, unto a man and his Aſſignes, In perpetuum. By theſe words he ſhall have a fee-ſimple. See more of that in the Chapter of Deviſes, &c. M. 22 E. 3. 16.

240 And it is to know, That if lands be given unto Major and Comminaltie for their lives, by intendment they have an eſtate T. 22 E. 4. Feſts 38.

not

not determinable. So if a feoffment be made of Lands unto a Dean and Chapter, without speech of their Successors.

T.11 H.4. 84. 241 And if my Feoffee in fee of one acre of Land, do re-infeoff mee of the same acre by deed, reciting in the same Deed, That I have enfeoffed him of an acre of Land, To have and to hold to him and his heirs: And saith further in the Deed, that as fully as I have given the Land unto him, he doth give mee them back again, and delivereth to mee the deed as his deed, and seisin of the land according to the Deed. In this case it seemeth, That I have an estate of Inheritance in this land, notwithstanding that it is not given unto mee and my heires, because that my estate doth relate upon an estate of Inheritance, recited within the same deed, tamen quære.

39 Ass. p. 12.

242 And if I be enfeoffed by Deed of an acre of land, to have and to hold the same land to me and my heires, and by the same Deed the Feoffor binds him and his heirs to warrant the same land, in forma prædicta. By these words I and my heirs shall vouch by this warranty, and yet I nor my heires are not named in the clause of the warranty, &c. But by these words (forma prædicta) the Warranty relates unto the words precedent in the Deed. And the nature of a Warrantie, is properly to runne with the estate, &c. And these words (forma prædicta) helpe this matter, &c.

H.14 H.4. 13.

243 Bu

443 But if Land be given unto mee by Deed to have and to hold to mee in Fee, without speaking of my heirs, and livery of seisin be made unto mee according to the purport of the Deed. By this Feoffment, I have an estate but for the terme of my life, &c. T. 20 h. 6. 46.

CHAP.

CHAP. IV.

Exchanges.

244 NOw are wee to speak of Exchanges: And it is to be known, That Exchanges are made of such things, and of such estates as may passe by livery of seisin, and if the things exchanged are in the same County, the exchange is good without deed, if not, that it be in special cases. As put the case, Exchange be made between I. S. and T. K. of the land which one hath in the County of Middlesex, for land which the other hath in the same County, &c. But if the lands of I. S. 9 E. 4. 39. which the exchange is made are in one County, and the lands of I. K. of which the Exchange is made are in another County, then the exchange ought to be by deed Indented, if the estate which the parties take by the Exchange be of an estate of Free-hold or inheritance: But if the estate in the exchange be for years, then the exchange is good & effectual without deed, notwithstanding that the lands of the one which is taken in exchange be in one county, and the lands of the other which is ta-

ken in change be in another County.

245 But if Exchange be made of any thing which lieth in Grant and cannot passe by liuery of seisin, then the exchange ought to be by deed, of what estate soever the exchange is taken, notwithstanding that every thing of which the exchange is taken be in the same County.

246 As put case, Exchange be taken of rent for Land, (and the Land out of which the rent is issuing) and the land whereof the exchange is taken, are in one County, then he who shall have the rent in exchange for the land, ought to have a deed of of the same, proving the exchange. But it is said that it behoweth not him who hath the land in exchange for the rent to have a deed proving the exchãge, ramen quære. For in exchange there ought to be two grants, and in every grant mention ought to be made of every thing taken in exchange, &c. And therefore it is well done, that in such case the exchange be by deed indented. 3 E. 4. 10.

247 But if an Exchange be taken of the reuersion of one acre of land for three shillings Rent issuing of the other acre of land, and both acres are in one County, it behoweth that such exchange be by deed indented.

248 And so it is if exchange be taken of one acre of land, and of rent issuing out of another acre of land, for common for three beasts, in another acre of land, and also for another acre of land, and all the land is in one County, such exchange ought to be by deed indented, &c. because that one land onely is not taken for other land onely, nor one acre onely is not taken

ken in exchange for Common onely, &c. But the land and the rent are taken in exchange for the Common, and the land, and the rent is not parcel of the Land, nor appendant to it. Nor the Common is not parcel of the Land taken in Exchange, nor appendant.

249 But if I. S. be seised of a Manor unto which he hath Common appendant or appurtenant. And T. K. is seised of another Manor unto which he hath a Villain regardant, and both Manors are in one County, and an exchange is betwixt them of the Manors, the Common shall passe unto the one with the Manor, and the Villain unto the other with the Manor without deed. But they shall not distrain for the services of the Tenants of the Manors without their attornment.

M. 9 E. 4. 39. 250 But if I. S. have an office unto which land is appertaining, and T. K. have a Rent issuing out of the land of a stranger, and all the Land is in one County, and the office is to be used and exercised in the same County, and exchange thereof is taken betwixt them, it behoveth that such exchange be by deed indented, Caula patet.

251 And it is to be known, That notwithstanding that exchange be taken between two men, or single women of two acres of land by deed, and in the Habendum of the same deed it is recited that every one shall have the said acre put in exchange with divers other acres, to have in excambium prædicta which were not recited in the premisses of the deed. These words shall not alter or make void the exchange recited, and rehearsed in the premisses of the deed. See divers other cases concerning this matter

matter in the Chapter of Deeds, Mutatis mutandis.

252 And it is to be known, That every exchange ought to be made by the word (Excambium) or by another word of the same effect, as by the word permutatio, &c. And therefore, first something shall be said thereof. Then, what things may be taken in exchange, and then what estates the parties to the exchange ought to have, and lastly, how the estates of the parties unto the Exchanges ought to be executed, &c.

253 And it is to know, that it hath been said, that in every exchange the word (Excambium) ought to be or, &c. as well as in every gift in Frank-marriage, these words (Frank-marriage) ought to be, and as well as in every gift in Frankalmoign, the word (Frankalmoign) ought to be. And therefore if I give unto I. S. one acre of land by deed indented, without any word of exchange, and for the same acre he giveth unto me another acre of land, in such manner and form, as I have made him gift unto him, & either deliver his deed unto the other as his deed, if livery of seisin be not made, the free-hold shall not passe, notwithstanding that either hath given his acre unto the other by the Indenture, To have and to hold unto him and his heirs. But if either of them enter into the others acre by force of the deed delivered unto them, they are tenants at will.

254 And if exchange be made by word betwixt two men in fee, of two acres of land, which are in one County, & before their entry by force of the exchange, Indentures are made M. 45 E. 3. 20. T. 38 E. 3. 1.

between them of the ſame acres in fee, but no word of exchange is expreſſed in the Indentures, and no livery of ſeiſin is made of the Land; but either delivereth to other the Indentures as his deed, and either entereth into the others land, contained in the Indenture. Now either of them holdeth the land at the will of the other, and ſhall not take the land by force of the Exchange, for the Indenture doth conclude them so to claim the land, &c. But if livery of ſeiſin had been made unto either of them according to the purport of the Indentures, then the Indentures ſhall take effect as Feoffments, &c.

255 And it is ſaid, If Exchange be made in fee of lands in one County, betwixt two men by word, and before their entry by force of the exchange, either of them deliver ſeiſin of the land unto the other, it takes effect according to the livery of ſeiſin, and not as an Exchange, tamen quære. For where either enters into the other land to take livery of ſeiſin, they are preſently ſeiſed by force of the exchange, for the entry of either of them was lawful in the others land, which was exchanged by force of the exchange: So that before livery of ſeiſin to them made, they were ſeiſed in fee by force of the exchange, and a man cannot take livery of ſeiſin of land whereof he himſelfe is ſeiſed, &c. But if there were only a ſpeech betwixt them of Exchange, but the exchange was not made, then it ſhall be otherwiſe, &c.

256 And if ſpeech be betwixt two to make exchange of certain land, and either of them leby a fine unto other of the ſame land, of which

which the ſpeech was without any word of exchange in the fine, it doth not take effect as an exchange, becauſe there wanteth the word of exchange: But it is ſaid, it is not uſed to have words of Exchange in a Fine, &c.

257 And it is to know, That if any man will exchange Land or other things by Fine, it behoveth them to have two writs of Covenant, viz. one writ of ones land, and another writ of the others land, &c. And it is to know, That if two Parſons of a Church exchange their Benefices, by the word permutatio, and either of them reſigne his Benefice into the hands of the Biſhop, to the ſame purpoſe: And the Patrons preſent them accordingly, and the preſentments make mention per viam permutationis, this is a good exchange, if either of them be induced living the other, &c.

258 Now is to ſhew, Of what things exchanges may be: And as to that, It is to know, that exchange may be of chattels perſonals, for chattels perſonals, and ſo it may be made of chattels reals for chattels reals, and of free-hold for free-hold, and of inheritance for inheritance, &c. And therefore if exchange be made between I. S. and T. K, ſo that T. K. giveth to I. S. his gown in exchange for the horſe of I. S. and I. S. giveth his horſe in exchange unto T. K. for his Gown, &c. it is a good exchange; And ſo ſhall it be of other chattels perſonals, mutatis mutandis. And in the ſame manner ſhall it be of Chattels reals, and free-hold, and inheritance, mutatis mutandis, &c.

259 And if Lord and Tenant be, by fealty

onely, or by Homage and Fealty, and exchange be made between the Lord, and a stranger by deed indented, so that the Lord grants his Seignorie in exchange unto the stranger for one acre of land of the strangers, &c. and the stranger giveth the same acre unto the Lord in exchange for his Seignorie, and the tenant attorneth, & the Lord enters into the acre so exchanged, &c. it is a good exchange notwithstanding that the homage and the fealty be not valuable, so as they shall not be sued Assets upon a lineal warranted descended upon the issue in tail, &c. For a man may buy such a seignorie for money. And by ẏ same reason, a man may give an acre of land in exchange for such seignorie, &c. and a seignorie by divine service may be exchanged for land, tenement, rent, or service, &c.

260 But a seignorie in Frankalmoign cannot be exchanged with any persons, but with the Tenant in Frankalmoign, because that the exchange of a seignorie in Frankalmoign with a stranger, proveth the Seignorie to be in esse, and no person shall have a seignorie in Frankalmoign, if not the Feoffor or his heirs, &c.

261 But quære, if Lord and Tenant be by fealty and 12 pence, and the Lord exchange his seignorie with the tenant for the tenancy, and è converso, by deed indented, if this exchange be good or not; for some say, it is not good, because that immediately upon the delivery of the deed, &c. ẏ seignorie is extinguished in the tenancy, so as the Lord shall have the tenancy, and the tenant shall have nothing for the tenancy, and so, &c. This argument may

be

be answered in this manner, that is to say, that the Lord granted his seignorie unto the Tenant by deed upon condition; and in the same case, if the condition be broken, he shall have his seignorie back again. And tenant for life may grant his estate by deed indented upon condition unto his Lessor, &c. In the same manner is it of a Seignorie granted in exchange: For every exchange comprehends in it a condition, &c. And so shall it be of an exchange by deed indented of Land, and rent issuing out of the same land, &c. And divers other arguments may be made in this matter, Ideo quære, &c.

262 But if a Manor or Land be given unto me, and I in Exchange for the same Manor or Land grant unto my Donor a Rent, &c. issuing out of the same Manor or land, &c. It is not available to take any effect as an exchange, &c. T. 9 E. 4. 21.

263 But if I grant a rent-charge issuing out of my land unto I. S. in exchange for one acre of his own land, &c. it is a good exchange, and I may exchange rent which I have issuing out of the land of I. S. with T. K. for his own land, Tenement, Rent, or Common, &c. And it is good with Attornment, &c. And yet if any of us the Exchangers die before attornment, it is not good. 30 E. 1. Exch. 15.

264 And if three acres of land with an Advowson unto them appendant are given in exchange by T. K. unto I. S. for a chamber assigned by the said I. S. at the election of the same T. K. And I. S. assigne unto T. K. two Chambers, viz. an upper and a lower, and T. K. chose to have the upper chamber, and M. 9 E. 4. 38.

enters therein, and I. S. enters into the land, &c. it is a good exchange, and yet it was not certain at the beginning, &c.

265 So shall it be, if I give my Manor of Sale in exchange unto T. K. for his Manor of Dale, or for his Manor of Downe, &c. And if exchange be made betwixt me and T.K. viz. that after the Feast of Christmas T. K. shall have my Manor of Dale in exchange for his Manor of Sale, &c. it is a good exchange, and either of them may enter into the others Manor, after the Feast of Christmas, &c. But if I give unto T. K. my Manor of Dale in exchange for the Manor of Sale, which he shall have after the death of his father, by descent, as heir unto his father, and his father be living at the time of the exchange, it is a void exchange.

266 But if a man releaseth his Estovers which he hath yearly to take in a wood, &c. and deliver the release in exchange for land given unto him in exchange for the release, it is a good exchange, and yet the release took effect by way of extinguishment, of the Estovers. But it is as good advantage and profit to the Tenant to be discharged of them, as if so many Estovers had beene granted unto him.

267 And so shall it be, if I have a rent issuing out of the land of I. S. and I grant or release the same rent unto I. S. in exchange for other land, Tenement, Rent, or Common, &c. Or to have a way over his lands, &c. Yet it is said by some, that in every Exchange there ought to be a transmutation of the possession of the one Exchanger into the o-

ther

ther Exchanger, otherwise the Exchange is not good. But the same is not true, as appeareth by the cases afore said.

268 And it hath been held, That if I be seised of land to which I. S. hath right of action, and I give unto him Tenements in exchange for a release of his right, that it is a good exchange, because I may purchase such release for my money, and by the same reason I may give Lands or Tenements in exchange for the same release, and also I have equal right by the Release unto the estate which I give, and it shall be a good advantage unto me to have it by extinguishment, as otherwise, &c. 16 E. 3. Exch. 2. M. 9 E. 3. 56.

269 And the same law is, of exchange of land, and advowson by deed indented for a release unto a usurper of his right unto another advowson, when his incumbent hath been in the possession by six moneths, &c. Yet against that, it may be said, That the Exchange in the first of these two latter cases is not good, because by such Release, &c. the estate of the Releasee is not altered, and by such release he doth not take more issues and profits of it, &c. And against that, it may be said, That now he hath this land without encombrance of Action, and so it is more profitable unto him, and of more value to be sold, &c. Ideo quære certitudinem inde, &c. And a rent descended unto the issue in taile by way of Extinguishment, shall be said to be Assets, &c. 31 E. 3. Assetts 5.

270 And therefore, if Father, Tenant in taile, and son be, and the father is seised of a Rent-charge issuing out of the land of the son in fee, and discontinueth the land entailed Grants 29.

with warranty. Now this Rent descended unto the issue by way of extinguishment, shall be Assets for the value thereof, because it is valuable, and as great advantage unto him to have the same extinguished, as to have so much rent in possession, and to be discharged of that rent: But a right of Cure or of action, or a use of Lands or Tenements, &c. descended unto the issue in tail shall not be Assets, &c. because that such Assets are not taken by the equity of the Stat. of Glouceſter, cap. 3. See the Stat. &c. But exchanges are at the Common law, and therefore common reason shall serve for them.

271 And if disseisor and disseisee be, and the disseisee releaseth his right unto the disseisor in exchange for another acre of land, &c. it is a good exchange, Causa patet. But if the Disseisee had granted his right unto a stranger who had nothing in the land exchanged for one acre of land, this exchange had not been good, for ỹ the stranger took nothing by ỹ grant, &c.

3 E. 4. 2e. Exchange 4.

P. 7 H. 4. 43.

7 And if the heir enter after the death of his father and assigne Dower unto his mother in exchange for another acre of land, it is a void exchange, because ỹ the tenant in dower is not in the land which she hath for her dower by the heir, but by her husband, &c.

273 And if disseisor & disseisee be of one acre of land, & the disseisor exchange the same acre of land with the disseisee for another acre of land, &c. this exchange is not good, if it be not by deed indented, or by fine, &c.

274 And it is to be known, ỹ an exchange is good, notwithstanding that the things exchanged be not of equal value, as Mr. Littleton hath

hath well ſhewed in his firſt book in the chap. of Tenant for years, &c. And it is to know, that in this book are divers caſes expreſſed & determined againſt the opinion of ſome men; *Sed ſcrutatis Libris non paucis, & fide non data unius hominis vel duorum hominum dictis, vel uni libro, &c. Et tunc authoritatem ſufficientium huic libello concordantium compertum habebis.*

275 Now is to ſhew, what eſtates the parties to exchanges ought to have: and as to that know, That the eſtate of either party unto the exchange ought to be equal, as Mr. Littleton hath well declared; And therefore, If an eſtate for life be expreſſed unto one party upon the exchange, and no eſtate be expreſſed unto the other party, &c. the exchange is not good; For notwithſtanding that both parties to the exchange have an eſtate of free-hold, yet the eſtate for the terme of another mans life is not ſo high an eſtate of free-hold, as the eſtate of him, who hath an eſtate for the terme of his own life, &c. T. 38 E. 3. 15. T. 34 E. 4. 12.

276 But if Leſſée for life be of one acre of land, and he giveth one other acre of land unto his Leſſor in fee tail for a releaſe of all his right in the acre which he holdeth for term of his life, to have and to hold the ſame acre unto him and the heirs of his body begotten, this is a good exchange.

277 But if I. S. and T. K. are enfeoffed of one acre of Land, To have and to hold the ſame acre to them, and to the heirs of T. K. and C. D. giveth unto them another acre of land, to them in fee in exchange for the ſame acre of which they are infeoffed as aforeſaid. It is ſaid, that this is no good exchange but for the moitie

moitie which appertaineth unto T. K. because that he hath fée in the moitie of ½ acre, whereof he was infeoffed, executed to such intent, or to put and vest the same in another person by alienation, that is to say, by feoffment, exchange, &c. and as unto the moitie which appertaineth unto I. S. the exchange is not good, because he departs but with the free-hold, &c. and he is to take a fée-simple in the other land, &c. But against that it may be said, that the exchange is good for all, because that the fée-simple of the whole acre of I. S. and T. K. was in T. K, &c. And then when I. S. and T. K. joyn in exchange of the same acre, the whole acre with the fée shall passe to C. D. so that he hath fée-simple executed in the same acre, and I. S. and T. K. have like estate executed in the acre of land, which C. D. gave in exchange unto them, as they had in the other land, and so the estates of the parties in the exchange are equal, &c. Ideo quære.

278 And also it may be said, That in the same case the exchange is void in all, for it is argued before, that the exchange is void for the moitie unto the said I. S. and when it is void in part, it is void in all, &c. As to that it may be said, That this reason is to take effect, where the exchange is made of things which are entire, &c.

T. 9 E. 4. 22.

2 E. 2. Cui in vita 17.

279 If a man seised of lands in fee in the right of his wife, giveth the same lands in exchange for other lands in fee, &c. this exchange is good until it be defeated by the wife or her heir, &c. So shall it be, if the husband and wife joyne in an exchange, &c. And if Lesse for years of land and his Lessor joyn in

exchange

exchange of the lands leased in fee, unto a stranger for other lands in fee, to each party; it seemeth to some, that this exchange is void unto the Lessee, and good for the whole land unto the Lessor; for the Lessee for years may surrender his land unto his Lessor of the land by word: Then when the parties, viz. the Lessor and the Lessee joyn in exchange in fee, it shall be said the surrender of the Lessee to his Lessor, as well as if Lessee for years of land, and his Lessor joyn in a feoffment of the same land leased unto a stranger, &c. And so, &c. tamen quære certitudinem.

280 If Disseisor and Disseisee be of one acre of land, and they joyne in exchange of the same acre of land in fee unto a stranger for another acre of land in fee, and the exchange is made of the land, this exchange is void to the Disseisee, & good to the Disseisor for the whole land: For the Disseisee at the time of the exchange had nothing in the land but a right, the which he could not give or grant unto a stranger, but may vest it in the person of the Tenant of the free-hold of the same lands divers ways, by extinguishment, &c. And at the time of the exchange, he to whom the exchange was made of the land, had nothing in the land, &c.

281 If two Joynt-tenants are in fee of one acre of land, and they exchange the same acre of land in fee with a stranger for another acre of land, To have and to hold one moitie of the same acre unto one joynt-tenant in fee, and to have and to hold the other moitie of the same acre unto the other joynt-tenant in fee, this is a good exchange, &c. So shall it be, if two

Tenants

Tenants in common of land, joyne in exchange with a ſtranger for another acre, to have and to hold the ſame acre unto them joyntly, &c.

282 And if the diſſeiſor of one acre of land enfeoffeth a ſtranger of the ſame acre of land, and the feoffee giveth unto the diſſeiſor another acre of land in fee, in exchange for a releaſe of all his right, in the acre of land whereof he was diſſeiſed, this is a good exchange, for notwithſtanding the heirs of the feoffee are not expreſſed in the exchange; the right of the diſſeiſee is extinct in the feoffee by force of the releaſe according to his poſſeſſion, which he had at the time of the releaſe made unto him, the which was in fee, and ſo the exchange is good.

283 But if Lord & tenant be, by fealty and 12 pence, of one acre of land, & the tenant grants another acre of land unto the lord in exchange in tail, for a releaſe of all his right in the tenancy, &c. it is no good exchange, becauſe that by the releaſe the fee-ſimple of the Lord is determined, and the Lord ſhall not have but an eſtate in tail in the land given unto him in exchange for the releaſe of his right, &c. So ſhall it be of all the like caſes, &c.

284 Now is to ſhew, in what time the eſtates of exchanges ought to be executed. And as to that, know, that the eſtate of exchanges ought to be executed in the lives of the exchangers, otherwiſe their heirs ſhall avoid them, if not, that it be in ſpecial caſes.

285 And therefore, if an exchangt of lands be betwixt two, and one entereth according to the exchange, and the other exchanger dieth, before any entry made by him, he who entred

ſhall

ſhall not be the firſt perſon who ſhall defeat the exchange: But if the heir of the exchanger who entred not, entereth into the land into which the other hath entred by force of the exchange, and putteth him out as he may, then he, viz. he who is put out, may enter into the land which he gave in exchange. M 9 E. 4. 39. P. 45 E. 3. Exch. 10. acc.

286 And it is to be known, That at all times during the lives of the parties unto the exchange, either of them may enter according to the exchange, at what time he pleaſe; if the poſſeſſiõ be not deveſted out of them, by an elder title, &c. as by an entry for a condition broken; or by an entry by the diſſeiſée, or his heirs, if thoſe who made the exchange, have, or any of them hath the land ſo given in exchange by diſſeiſin, &c. Or by recovery upon an elder title, &c. Or by alienation in Mortmain, made before the exchange made; Or by any other lawful cauſe, &c. M. 15 E. 4. 3.

287 And ſome have ſaid, That in ſome caſe, the party unto the exchange ſhall enter, if the poſſeſſion of the land be deveſted out of the other party unto the exchange, notwithſtanding that it be not deveſted out of him by an ancienter title: As put caſe, an exchange be made of land in fee, between an Abbot and a Lay-man, & the Abbot entreth into ẏ land of the Lay man by force of the exchange, and the layman doth not enter into the land put in exchange by the Abbot, & the Lord of whom the land is holden, in which the Abbot hath entred by force of the exchange, entereth into the ſame land within the year & the day after ẏ exchãge, as into land alienedin Mortmain; In this caſe they ſay, that the Abbot ſhall retain the land which

which he put in exchange in his poſſeſſion; and the other party to the exchange ſhall not have his own land again which he himſelfe put in exchange unto the Abbot, becauſe that the poſſeſſion thereof is out of him in the perſon of the Abbot by his own act, and the ſame acre the Abbot cannot retain in his poſſeſſion againſt the Lord of whom it was holden, &c. But againſt that it may be ſaid, That for as much as the Abbot hath executed the exchange he ſhall for no cauſe diſagree unto the ſame, &c. if not, that it be in very ſpecial caſes. And every exchange is conditional, Ideo quære, &c.

288 And it is to know, That if two Parſons of two ſeveral Churches exchange their Benefices, and reſigne them into the hands of the Ordinary to the ſame purpoſe. And the Patrons make preſentments accordingly, and one of the Parſons is admitted, inſtituted, and inducted, and the other Parſon is admitted and inſtituted, but dieth before enduction, the other Parſon ſhall not keep the Benefice in which hee is inducted, for the exchange is not perfected, becauſe it is not executed, &c.

M. 45 E. 3. Exch. 10.

289 And if the Reverſion of one acre of land be exchanged for another acre, &c. and the exchanger of the reverſion dieth before attornment made unto him, his heir may enter upon the other exchanger, and put him out of the land put in exchange by his father, &c.

290 But if a man ſeiſed of land in fee in the right of his wife, and he and his wife exchange thoſe lands for other lands in fee, and the exchange is executed, and the husband

16 E. 4. 8.

dieth,

dieth, and the wife enters into the lands taken in exchange, now she shall defeat the exchange, &c.

291 But in the same case, if the husband alone had made the exchange, the wife may avoid it, notwithstanding his entry in the same lands, after the death of her husband, for then by her entry he is not seised of the lands by force of the exchange, because that he is not party thereunto, and she cannot be privie thereunto, &c.

292 If an Exchange be had betwixt two men of lands, and before their entry by force of the Exchange they are disseised of the land put in exchange, and the Disseisor dieth thereof seised, and the parties unto the exchange enter into the lands put in exchange accordingly, and put out the heire of the Disseisor, this entry cannot be said an execution of the exchange, because that their entry was taken away by the dissent, &c. But if the Disseisees had recovered the same lands against the heir of the Disseisor by several writs of Entre en le per, &c. and had them in execution, then they might enter according to the exchange, and this entry shall be a good execution of the exchange, &c.

293 And if a man be seised of land in the right of his wife in fee, and thereof enfeoffeth a stranger, and takes back an estate unto him and his wife, and unto a third person in fee, and they three joyne in exchange of the same lands in fee, for other lands unto a stranger in fee, and the exchange is executed, and the husband dieth, and the wife doth occupie the land taken in exchange with the third person;

8 E. 2. Ic. Cau. Cui in vita 28.

By

By this occupation of the land she shall be excluded to have any part of the other land which was given in exchange for this land, &c.

294 And if Tenant in tail be of one acre of land, and he exchange the same acre for another acre with a stranger in fee, and the exchange is executed, and the tenant in taile dieth, and his issue enters into the land taken in exchange by his father, he hath perfected the exchange during his life, &c.

T.16 E.3. exch. 2. M.4 E.2. exch. 3. H.12 H.4. 12.

295 And if an Infant exchange land, &c. and occupie the land taken in exchange when he cometh of full age, the exchange is executed, &c. And it hath been said, that if a man be seised of a Manor, viz. of one moitie in taile, and of the other moitie in fee, and giveth this Manor in exchange for another Manor in fee, and the exchange is executed, and the Tenant in tail dieth, and the issue in tail (disagreeing unto the exchange) enters into the whole Manor put in exchange by his father, the exchange is avoided for the whole, because the exchange was made of one entire thing for another entire thing, tamen quære. For in the same case if the exchange had been impleaded of parcel of the same Manor, whereof one moitie was in tail &c. and had vouched, and the vouchee entred into the warranty, and lose, &c. he shall not recover in value, but for the portion which is lost, &c.

296 And if a man be seised of two acres in fee tail, and of another acre in fee, and exchangeth these three acres with a stranger for another acre in fee, and the exchange is executed, and the Tenant in taile dieth, and the issue in tail (disagreeing unto the Exchange) enters into

into all the three acres put in exchange by his father, his entry is lawful in all the tailed land, and for that land the exchange is avoided, &c. But into the third acre of which his father was seised in fee, his entry is not lawful; and for that acre the exchange shall stand: So an exchange is avoided in part and shall stand in part, &c. Quære, if the other exchanger can enter into any parcel of the land by him put in exchange, because there is not care of the value.

297 And if I. S. be seised of white acre in fee, and he exchangeth the same, and black acre wherein he hath nothing with a stranger, for another acre in fee, &c. the exchange is void as unto black acre: But notwithstanding it is said, I. S. shall have the whole land which was put in exchange by the stranger; for they say, there is no care of the value of the land, &c. quod verum est, &c. tamen quære, for it seemeth it is not within the same reason, &c.

298 And if a man of unsound memory being seised of land in fee, exchangeth the same land with a stranger for another acre of land in fee, and the exchange is executed, and he of unsound memory dieth, and his heir enters into the land taken in exchange by his father, now he shall not avoid this exchange, &c.

299 And it is to be known, That in some special case an exchange may be executed in the parties to ỹ exchange, & may be avoided by the same parties. As put case, a man granteth unto me common for 6 beasts in his meadow, &c. in exchange for a way over my land for to carry 9 E. 4. 23

carry the hay growing upon the ſame land unto his houſe in Dale. And I grant the ſame way unto him, in exchange for the common, &c. and the exchange ought to be by deed indented, &c. And I uſe the common by force of the exchange, and the other party to the exchange, ſhall uſe the way according to the exchange, and afterwards he will not ſuffer me to uſe my Common, then I may not ſuffer him to uſe the way, and the reaſon is, becauſe they are yearly executory, &c. The ſame reaſon may be made, if a rent be exchanged for a rent, &c. Ideo quære.

CHAP.

CHAP. V.

Dower.

300 NOw are we to ſpeak of Dower. And as unto that, know, That as Mr. Littleton hath well ſhewed and ſet forth in his firſt Book, there are five manner of Dowers, which appear in his chapter of Dowers, and many and divers good caſes concerning Dower, are there put by my Lord Littleton. And alſo there are ſo many good and neceſſary caſes concerning Dower put upon the writs of Dower, in Natura Brevium, with the additions, that a man can hardly ſpeak any thing more concerning dower, beyond what is ſhewed and ſaid in the ſame books. And yet notwithſtanding that, ſomething ſhall by the grace of God be ſaid here concerning Dower.

301 And as unto Dower at the Common Law, it is to know, Where husband and wife are, and the husband is ſeiſed of ſuch eſtate during the marriage, that the iſſue which by poſſibility they may have between them during the marriage, by poſſibility may inherit by the Common Law. The wife ſhall be

endowed of the estate and possession which the Husband hath be not lawfully avoided, &c. if not that it be in speciall cases, &c.

302 And therefore if Tenant in generall tail, take a wife, and enfeoffeth a stranger, and takes back an estate unto him & his wife
M. 14 E. 4. 30. in special tail and the wife dieth, and he marrieth another wife, and hath issue and dieth, the second wife shall not be endowed, yet the issue is remitted unto the generall tail. But the second wife shall not have dower thereof, because that her husband was not seised of such estate, &c. during the marriage between them two, &c.

303 But if Lord and a woman Tenant be of one acre of land by fealty and twelve pence rent, and they enter-marry, and the husband die, the wife shall be endowed of the
1 E. 3. 6. third part of the rent by way of retainer; And yet the husband was not seised thereof in deed during the marriage celebrated betwixt them, for by the marriage betwixt them, the Seigniorie was in suspence, and so continued during the marriage, as to bring an action, so as it did amount unto a possession in law, &c.

304 And of a seisin and possession in Law, the Wife shall be endowed, &c. And if a man seised of Land, Tenement, or Rent, &c. in Fee, takes a wife, and during the same marriage, he marrieth another wife, and the husband dies, leaving both wives, the latter Wife shall not have Dower, because the marriage betwixt them was void, &c.

39 E. 3. 1. 305 And if a woman take a Husband, and lying

living the ſame Husband, ſhe marrieth another Husband who is ſeiſed of Land in fee, and the ſecond Husband die, ſhe ſhall not have Dower of his land, Cauſa patet. But if Alice at Style make a contract of Matrimonie with C. D. and before the marriage ſolemnized betwixt them, ſhee marrieth with I. K. who is ſeiſed of land in fee, &c. And I. K. dieth, ſhe ſhall have Dower as wife of I. K. if the marriages be not avoided; for they were but voidable, &c.

306 And if a man ſeiſed of land in fee, make a Contract of Matrimonie with I. S. and he die before the marriage ſolemnized betweén them, ſhe ſhall not have dower, for ſhe never was his wife. And it hath been holden in the time of King Henry the third, That if a woman had beene married in a Chamber, that ſhe ſhould not have Dower by the Common Law, but the Law is contrary at this day.

307 And if a man ſeiſed of land in fee takes a wife, and enters into Religion, and is profeſſed, his heire ſhall inherit preſently, yet his wife ſhal not have Dower during the natural life of her husband, for the husband cannot be profeſſed in Religion during the marriage, without the aſſent and agreement of his wife; and if he be ſo without her aſſent, the profeſſion is void, &c. 10 H. 3. Dow. 200.

308 And it is to know, That if Tenant in generall tail taketh a wife, and hath iſſue by the ſame wife, and the husband be attainted of Felony, and dieth, the wife ſhall not be endowed; and yet his iſſue which he hath ſhall inherit, but he ſhall not inherit by the com-

mon law, but by the Statute of Weſtminſter, 2. Cap 1.

309 And it is to know, That if father and ſon be, and the father is ſeiſed in fee of one acre of land, and exchanges the ſame acre for another acre with a ſtranger in fee, and the exchange is executed, and the father dieth, and the ſon takes a wife, and enters into the acre taken in exchange by his father, and the party to the exchange who ſurvi veth is impleaded o the acre taken in exchange by him, &c. ant voucheth to warranty the ſon, who entreth into the warranty and loſeth, &c. And the demandant hath execution againſt the Tenant and the tenant ober in value againſt the vouchee of the acre, which the Tenant put in exchange unto the father of the vouchee, &c. & the vouchee dieth, his wife ſhall not have dower of this acre put in execution, becauſe that the recovery in value ſhall have relation unto the time of the exchange made, which was made before the title of the wife to have dower, and ſo the poſſeſſion of the husband is avoided by an elder title before the marriage.

4 E. 3. 52. T. 15 E. 3. Dow. 129.

310 And if two men be coparceners of land in Gavelkind, and they make partition, and one of them taketh a wife, and the other is impleaded of his part. and prayeth in aid of his copercener, and he joyn to him in aid, and the Demandant recover, and the Tenant hath pro rata, of that which remaineth in the poſſeſſion of his copercener, and the copercener of whom the aid was prayed dieth: his wife ſhall not have dower of that which the other copercener had pro rata, becauſe that the title of the copercency who had pro rata, ſhall have relation

tion unto the time of the death of their Anceſtor, &c.

311 And if a man by deed indented enfeoffeth another of land upon condition to be performed on the part of the Feoffor, and the Feoffee take a wife, and the Feoffor performe the condition, and the Feoffee dieth, his wife ſhall not have dower of this land, &c.

312 And if I enfeoff a man of land upon condition that he ſhall enfeoff I. S. of the ſame land before the Feaſt of Eaſter next enſuing, and the Feoffee taketh a wife, &c. not tendring any feoffment unto I. S. before the ſame feaſt, and I enter, and the Feoffee dieth, his wife ſhall not have dower againſt me, becauſe that my entry ſhall have relation unto the time of the feoffment, &c.

313 But if Lord and Villein be, and the Villein take a wife, and purchaſeth land in fee, and preſently after the poſſeſſion executed in the Villein by force of the purchaſe, the Lord enters, and the Villein dieth, his wife ſhall have dower againſt the Lord, becauſe that his title doth not begin but by his entry, and the title of the wife to have Dower, was before the ſame, &c.

314 But if Lord, and Neife in groſſe be, and they enter-marry, and the Lord is ſeiſed of land in fee, and the L O R D die, ſhe ſhall not have Dower againſt the heir of the Lord, becauſe ſhe is his Neife: But if the Lord had enfeoffed a ſtranger of the ſame land, ſhe ſhall have dower againſt the Feoffee, becauſe ſhe is not his Neife. But otherwiſe is it, if ſhe had been a Neife Regardant to the land, of which the feoffment was made, &c.

315 And it is to know, That it hath bene holden in divers books, as in three or 4 books, That if there be Grandfather, Father and Son, and the Grandfather is seised of one acre of land in fee, and taketh a wife, and the father taketh a wife, and the Grandfather dieth, and the father entreth and dieth seised, and ỹ son doth enter & endoweth his Grandmother, and the Grandmother dieth, the wife of the father shall not be endowed of the land whereof the Grandmother was endowed, because ỹ a woman shall not be endowed of a Reversion expectant upon a free-hold, and the possession of the free-hold by the endowment is vested in the Grandmother by a title, before the title of the father unto the free-hold: But if the Grandfather had enfeoffed the father of the same land during the Marriage betwixt the father and his wife, In that case, after the death of the Grandmother, the wife of the Father should have Dower of the same Land of which the Grandmother was endowed, because the possession of the Father which gave title to his wife to have Dower, was in the life of the Grandfather, at which time the Grandmother could not demand dower, so that by ỹ endowment of the Grandmother, the possession of the Father is not avoided, for the Grandmother had right unto the possession but from the time of the death of the Grandfather, &c.

316 And if there be Grandfather, Father, and son, and the Grandfather be seised of one acre of Land in fee, and taketh a wife, and the Father take a wife, and the Grandfather dieth, and the son entreth and endoweth his Mother,

8 E. 2. 8. Ic. Canc. aff. 393.

Mother, against whom the Grandmother bringeth a writ of Dower, and recovereth and hath execution. And the Grandmother dieth, in this case the mother may enter into ỹ land, recovered by the Grandmother against her, and retain the same land against the Donee, because she was endowed thereof by him. And so shall it be, if the mother had recovered against him in a writ of dower.

317 And it is to know, That if a man be seised of land in fee, and giveth the same land in tail unto a stranger, reserving to him and his heirs twelve pence rent, and for default of payment a re-entry, &c. And the Donor taketh a wife and dieth, & the heire of the Donor entreth into the land for the condition broken, the wife of the Donor shall not be endowed of the rent, nor of the land, &c. And the wife of the Donee shall not be endowed, and yet if Donee of land in generall tail take a wife, & dieth without issue, & the Donor doth enter, the wife of the donee shall have dower, & yet the estate tail wch made her title is determined, &c. M. 44 E. 3. 31. M. 46 E. 3. 24.

318 And it is to know, That sometimes the wife may chose to be endowed of one land, or of other land, &c. or of a Seigniory, or of a Tenancy, &c. Or of land, or of a rent-charge, or of a rent-seek issuing thereout, &c. but in such cases she shall not have dower of both, if not, that it be in special cases, &c.

319 And therefore if a man seised of one acre of land in fee, taketh a wife, & exchanges the same acre of land with a stranger, for another acre of land, and the exchange is executed, and the husband dieth. Now it is at the liberty of the wife to have dower of the acre which M. 13 E. 3. Dow. 130.

which the husband put in exchange, or of the
M. 13 H. 3. acre which the husband took in exchange: But
Dower 93. she shall not have dower of both acres.

320 And if there be Lord and Tenant by fealty and twelve pence rent, and the Lord taketh a wife, and purchaseth the Tenancy in fee and dieth. In this case it shall be at the liberty of the wife to be endowed of the Seigniorie, or of the Tenancy, &c. So shall it be, if a man seised of a rent-charge in fee, take a wife, and purchase the land in fee whereout the rent is issuing, and dieth, it shall be at the liberty of the wife to be endowed of the land, or of the rent, &c.

321 But if there be Lord and Tenant by fealty, and the Lord taketh a wife, and the tenancy escheat unto the Lord, and he enters and dieth: In this case it shall not be at the liberty of the wife, to have dower of the Seigniorie, or of the Tenancy. But she shall be forced to take her dower of the tenancy, and the reason is, because that the seigniorie is determined during the coverture, by act of law, and it is no disadvantage unto the wife to be endowed of the tenancy; for if she be put out of possession of part thereof by a more ancient title, the seigniorie shall be revived for so much: and if all the tenancy be recovered by a more ancient title, then the seigniorie shall be revived in all, &c. and then she may have dower of the seignorie, &c.

H. 22 E. 3. 322 If there be Lord, Mesne, and Tenant
Dow. 131. by fealty and 12 pence rent, and the Mesne taketh a wife, and releaseth all his right unto the tenant, and dieth, the wife shall be endowed of the mencaltie, so shall it be in such case,

if

if the Tenant foze-judgeth the meſne, &c. And if the Diſſeiſoz of one acre of land enfeoffeth a ſtranger of the ſame acre with warranty, and the Feoffée taketh a wife, and the Diſſeiſée bringeth a writ of Entre en le per, againſt the Feoffée, and he vouch to warranty his Feoffoz, &c. and each recovereth againſt the other and have execution, & the feoffée dieth, the wife of the feoffée ſhall have dower of the land which her husband recovered in value, and not of the land which he loſt, Cauſa patet.

323 If there be Lozd and Tenant by fealty and 12 pence rent, and the Lozd take a wife and dieth, and his wife is endowed of the third part of the rent, and the Tenant dieth without heir, ſo as the tenancy doth eſcheat. In this caſe, the wife ſhall not be endowed of the tenancy, notwithſtanding that it cometh in lieu of the ſeigniozie, becauſe it was not in the poſſeſſion, and ſeiſin of the husband: But ſhe ſhall retain the rent which was aſſigned unto her in dower, as a rent Seck, and ſhall diſtrain of common right, &c.

324 And it is to know, that ſome perſons hold opinion, that in ſome ſpecial caſe, a wife ſhall be endowed of land, and alſo of rent iſſuing out of the ſame land. And therefoze they ſay, that if a man be ſeiſed of four acres of land in fée, and taketh a wife, and enfeoffeth a ſtranger thereof by deed indented, and rendring unto him and his heirs three ſhillings rent with clauſe of diſtreſſe, and dieth, and the Feoffée endoweth the wife of the Feoffoz of the third part of the land, the land which is aſſigned unto her in dower is diſcharged of this rent, and the whole rent is iſſuing out of the reſidue

residue of the land: And the reason is, because that the wife shall be endowed of the best possession which her husband hath during the coverture: And the husband was seised of this Land during the coverture discharged of the rent, and so, &c. And this rent is a rent-charge, and doth not come in lieu of the land. And the husband had an estate in the Rent during the Coverture, &c.

325 If a man seised of three acres of land in fee, taketh a wife, and dieth, and a stranger abateth in one of the acres, and is seised in fee of two other acres, and marrieth the same woman, and enfeoffeth a stranger by deed indented, of the three acres, yelding to him and his heir 3 shillings rent, with clause of distresse, and dieth, now all the three acres are charged with the rent. But if the heir of him after whose death the abatement was, recovereth the acre of land in which the abatement was, and assignes the same acre unto the wife for her Dower, yet the wife may have dower of the rent, for this acre is as if it were never charged, and the whole rent is issuing out of the two other acres, &c.

326 And if a man seised of three acres take a wife, and enfeoffeth a stranger by deed indented of two of the three acres, rendring two shillings rent, unto him and his heirs, with clause of distresse, and the wife is endowed of the third acre which remaineth in allowance of the other acres; yet they say, that she shall have dower of the rent which is issuing out of the other two acres, tamen quære. For it is against the opinion of divers men, and against conscience, &c.

5 E. 2. Dow. 143. P. 22 E. 3. 14.

327 And

327 And it is to know, That if a man grant unto me a rent-charge in fee upon condition, that if I die, my heir within age, that the rent shall cease during his nonage, and I take a wife and die my heir within age, my wife shall not be endowed of this rent, because it is a condition indeed annexed unto the estate at the beginning of which estate the wife claimeth dower, &c.

328 And know, That if a man be seised of 20 acres of land in fee, and taketh a wife, and enfeoffeth a stranger of the land, and the Feoffee builds thereupon a Castle, or a Mansion-house, or other buildings, or otherwise doth improve it, so as it is worth more by the year then it was in the possession of the Husband; the wife shall not have dower but according to the value it was at in the time of the husband. And yet if a Disseisor build upon land which he hath by disseisin, and the disseisée entreth, he shall have the building, &c. And so shall it be, if the Feoffor upon condition entereth for the condition broken, &c. ỹ difference is apparent. M. 17 H. 3. Dow. 192.

329 But if a man seised of land in fee upon which there is building, so ỹ by reason thereof is worth 4 l. more by the year and he taketh a wife, & enfeoffeth a stranger, who taketh down the building, and the Feoffor dieth, The wife shall have dower according to the value of the land as it was at the time of the death of the husband, & hath not any remedy for ỹ taking away of the building before the death of the husband, notwithstãding ỹ the building were upon the same land in the possession of the husband during the coverture, for the wife hath not right to have dower before the death of the husband, &c. Tamen quære, of this case. 330 And

126 330 And it is to know, If a man be seised of three Manors in fee, and taketh a wife, and granteth a rent-charge issuing out of all the three Manors, and dieth, and the wife taketh one Manor by assignment of the heire for her dower, in allowance of all the three Manors: now two parts of this Manor doth remain charged to the distresse of the Grantee, notwithstanding ỹ the grant of the rent-charge was made during the marriage, and the reason is, because that as to the two parts she hath taken her dower against common right; for according to common right, she ought to have the third part of every Manor for her dower: But in the same case, if she had recovered her dower, and such assignment had been made unto her by the Sheriff, she should have holden the same discharged, Causa patet.

331 But if a man be seised of three Advowsons of three severall Churches, and taketh a wife, & granteth unto a stranger that he shall present to the next avoidance of the 3 Churches which shall first become void, and the Grantor dieth, and his wife bringeth a writ of Dower against the heir, before any Church become void, and recovereth. And the Sheriff doth assigne unto her the Advowson of one Church for her dower, in allowance of the other Churches which advowson assigned unto her doth first become void after the grant made by the husband, and the avoidance happeneth after the assignment of the dower: It seemeth unto some in this case, That the wife shall not have this avoidance, but the Grantee shall have the same, because that she is endowed against common right, for of right she ought to

have

have but the third avoidance of each advowſon of each Church.

332 And notwithſtanding that the aſſignment be made by the Sheriff, it ſhall not prejudice nor ouſte the Grantee of his right, becauſe he is a ſtranger unto the aſſignment, and alſo he cannot otherwiſe take advantage of his grant but onely at this avoidance, tamen quære. But otherwiſe is it in caſe of a grant of a rent-charge out of three Manors, for when ỹ aſſignment is made by the Sheriff of one Manor in allowance of all the Manors, the Grantee may diſtrain for the whole rent in the other two Manors, and in every part of them, and it ſhall not be more prejudicial unto the heir this way, than the other way, &c.

333 And it is to know, That a woman ſhall never be endowed, if the free-hold and the inheritance be not in the Husband, Simul & ſemel, during the marriage.

334 And therefore if lands be given unto two men, and unto the heirs of the bodie of one of them begotten, and he who hath fee tail take a wife and dieth, leaving him that hath the free-hold, notwithſtanding that he that hath the free-hold dieth, the wife ſhall not have any dower, becauſe the eſtate tail was not executed to all purpoſes in her husband. And yet if a ſtranger had entered after his death who had the Free-hold, the iſſue of the Donee ſhall have a Formedon en le Diſcend. againſt him, and ſhall alledge the Explees in his father; and ſo to ſuch intent the eſtate was executed in the Donee, &c. T. 11 H. 7. 3.

335 And if the Husband hath an eſtate P. 48 E. 3. in 15.

in land, &c. by fine upon a grant and render for life, the remainder unto I. S. his son in tail, the remainder unto the right prises of the husband; and the fine is executed. If in this case the Husband dieth living I. S. his sonne, or any issue by him begotten, his wife shall not be endowed, notwithstanding that I. S. the son dieth without issue after the death of the husband living the wife; Causa patet. But if a lease be made of land for years, the remainder unto I. S. for life, the remainder unto the right heirs of I. S. And I. S. take a wife, and dieth during the terme of years, his wife shall recover dower: But execution shall stay during the term of years.

336 And if a lease of lands be made to the husband for life, the remainder to a stranger for years, the remainder unto the husband in fee, and the husband die during the years, the wife may recover Dower: But Execution shall stay until the Terme be determined; for this mean remainder for years shall be no impediment, but that the free-hold was sufficiently joyned in the Husband Simul & semel, for the wife to have Dower, &c.

337 If land be leased unto A. and B. for the life of C. the remainder unto the right heirs of A. and A. takes a wife, and C. dieth living A. and B. and A. dieth living B. his wife shall be endowed, because that Cestuy que use died living A. the husband, so as the Free-hold and inheritance are joyned in the husband during the Coverture.

H. 5. E. 3. 4. 338 And if lands are given unto I. and Alice his wife in special tail, the remainder unto the right heirs of the husband, and the wife die

die before issue betwixt them, and the husband taketh another wife, and dieth, his second wife shall be endowed, &c.

339 If there be Lord and Tenant by fealty and rent. and the Tenant leaseth the tenancy for life unto a stranger, and the Lord takes a wife, and the Tenant dieth without heir, and afterwards the Lord dieth before the Lessee for life, the Lords wife shall not have dower of the Tenancy: but she shall be endowed of the rent of the Seigniorie, &c.

340 And if Grantee of a rent in charge in fee take a wife, and the Grantor leaseth the land out of which the rent is issuing unto a stranger for life; And the Grantee of the rent purchaseth the reversion of the same land, and the Tenant for life attorneth, and the Grantee of ẏ rent dieth, living the tenant for life, his wife shall be endowed of the rent, but not of the Land, because the Free-hold and inheritance were not in the Husband Simul & semel, during the coverture, &c.

341 Now is to shew of what things a woman shall be endowed: And as to that, Lib. Natura Brevium, with the additions upon the writs of Dower, &c. Of a common without number a woman shall not be endowed, &c. 2 E. 2. Dow. 123. And if a man grant unto me and my heirs to take yearly so many Estovers in his Wood in Dale, as I & my heirs will burn in the same Manor of Dale, and I take a wife and die, my wife shall not have dower of the Estovers, &c.

342 But a woman shall be endowed of a Mill, as to have the third profit of ẏ Mil, &c. because the mill cannot be severed: And a woman may have a rent allowed unto her out 1 H. 5. 1. M. 45 E. 3. Dower 50. 16 Ass. 4.

of a house for her dower of the house, or shee may have a chamber of the same house assigned unto her in allowance of her dower of the house. And a woman shall be endowed of a Villein in grosse as to have the services every third day. And a woman shall be endowed of an Advowson in grosse, as to have the third presentment. And a woman shall be endowed of a Bayliwick, as to have the third part of the profit thereof, and in such case she shall be contributary unto the third part of the charge of the Office. And so in the like manner she shall be endowed of a Fayr, Mutat is mutandis, &c. And a woman shall have dower of a common in grosse which is certain.

2 H. 6. 11. T. 13 E. 2. Dow. 161.

343 And if a man grant unto me and my heirs to take yearly out of meadow three loads of hay, and I take a wife and dye, my wife shall have dower thereof, &c. Nemo quære. And a woman may be endowed of a villein regardant and of an advowson appendant, &c.

344 But if a man be seised of a Manor in fee, unto which he hath common appendant, and taketh a wife and dieth, and two acres of land, parcel of the Manor are assigned unto her for dower, in allowance of all the Manor, it seemeth in this case, that she shall not have common appendant unto these two acres, for during the time they are in the possession of the woman, they are not parcel of the Manor, and the Common is appendant unto the Manor, tamen quære. But if the moitie of the Manor had been assigned unto the wife for her dower by the name of the moitie of the Manor, it seemeth clear that she shall have common appendant to this moitie.

345 If

345 If there be Lord and Tenant by fealty and 12 pence, and 12 bushels of wheat, &c. and the Lord take a wife and dieth, his wife shall have dower of the 12 pence rent, and of the 12 bushels of wheat, &c.

346 but if a man hold of me and my heirs by Homage, Fealty, and to finde a Chaplain to sing every Friday in the week yearly in the Church of St. Nicholas in [illegible] in the County of Middlesex, at such an Altar for the prosperity of me and my friends, and for my Ancestors souls, and I take a wife and die, my wife shall be endowed of no part of this seigniory, and so shall it be in all the like cases, &c.

347 But a woman shall be endowed of land, tenement, woods, &c, rent-charges, rent-secks, &c. But if annuity be granted unto me and my heirs, by the Grantor and his heirs, and I dye, my heir shall have this annuity against the Grantor, as also his heirs, if they have lands or tenements unto the value in fee-simple descended unto them, and yet my wife shall not have dower of it, Causa patet.

348 And if a man seised of one acre of land lease the same for life to a stranger, reserving two shillings rent to him and his heirs, and the Lessor taketh a wife, and dieth, the wife shall not be endowed of this rent, and yet the heir of the Lessor shall have the rent with the reversion, and it shall be Assets in a Formedon en le discend. brought by the same heir, &c. Also the wife of the Lessor shall not be endowed of a reserved upon a lease for years unto the Lessor and his heirs, &c. But the wife of the 8 H. 2. Dow. 124.

Donor shall be endowed of a rent reserved unto the Donor and his heirs upon a gift in tail of land, &c.

349 But a woman shall not be endowed of a use of land, or rent, notwithstanding that it was such an inheritance in her husband, the which issue, which by the possibility they might have betwixt them might inherit, &c. And it is to know, that in many cases a woman by her own act may prejudice her self in her dower, as if she commit Treason, murder, felony, for which she is attainted, &c

350 And if a man seised of black acre in fee, taketh a wife and dieth, and the wife accept of a lease for life of black acre, for that she cannot demand it against her self, Quære, If she accept of a lease of years for black acre, whether by this acceptance she shall be excluded of her dower during the terme, for ever, or for any time, &c.

M. 2 H. 4. 7.

351 And if a man seised in fee of white acre, leaseth the same acre unto a single woman for forty years, and the Lessor enter-marrieth with the Lessee, and the Husband suffereth the terme to continue as it was, without any alienation, or other thing done therewith, and dieth within the terme, it is said, that in this case, the wife may have her dower presently, notwithstanding that the term doth continuance, because that at the time of the lease she was entituled to Dower: and notwithstanding that the term doth continue, it shall not ouste her of her dower, until the term be determined; because if it should be prejudicial to any person, it should be unto the prejudice of the wife her self.

352 And

352 And if there be husband and wife, and lands are given unto them, and unto the heirs of the husband, and the husband dieth, and the wife bringeth a Writ of Dower before any agreament, and that after the death of the husband, in this case she shall have dower, for she shall not be compelled to take by purchase against her will, & that before the death of the husband, and the bringing of the writ of dower is a disagrament to take by purchase, wch disagreement shall have relation unto the time of the purchase: Quære, if the purchase had been made unto the husband and wife for the life of the husband, the remainder unto the right heirs of the husband, because that estate of the wife had determined by the death of the husband: And it hath been said, That a disagreement cannot be unto an estate, after the estate determined. P. 1 E. 3. 15.

153 But it seemeth, that in this case the wife may disagree by bringing of a Writ of Dower, notwithstanding that the estate were determined, for otherwise by such means the wife might be outed of her dower in every purchase made by her husband: and yet during the marriage, she is alwayes by law under the government of the husband in such manner and form, as that she cannot give away any manner of profit arising out of the lands without the leade of her husband, and she cannot disagree unto the same estate during the marriage. T. 43 E. 3. T. 19 E. 2. Dow. 94. T. 9 E. 3. 29.

354 And it is commonly taken, ỹ if a woman run away from her husband with another man in adultery, and be not reconciled again unto him with his good will, and her

agrément, without the conſtraint of holy Church, ſhe ſhall loſe her dower, notwithſtanding that ſhe remaineth not with the Adulterer: But if ſhe remain with her husband after ſuch her running away, with his agrément, and without conſtraint, ſhe ſhall have dower. vide Weſt. 2. c. p. 35. And if a woman be raviſhed, and remain with the Raviſher againſt her will, ſhe ſhall not loſe her dower. But if ſhe willingly run away from her huſband, notwithſtanding that ſhe remain all her life time with the Adulterer againſt her will, ſhe ſhall loſe her Dower.

355 But if a man ſeiſed of two Manors in fée, taketh a wife, and when the husband is dwelling at one Manor, the wife goeth unto the other Manor, and when ſhe is there ſhe liveth in adultery; it is ſaid, by doing ſo, ſhee ſhall not loſe her Dower, becauſe it cannot be intended a running away from her huſband, for ſhe remains at the proper Manor of her husband, and the Law will not intend that ſhe can dwell upon the Manor of her huſband without the agreement of her husband, tamen quære. And it is to know, That a woman may delay her ſelfe of her dower, by the detaining of the Charters which concern the inheritance whereof ſhe demandeth dower from the heir, &c.

M. 19 E. 4. 4. 356 And therefore, If a woman bring a writ of dower againſt the heir of her husband, &c. It is a good plea to ſay, that the woman doth detain from him certain Charters, and ſhew what Charters concerning his Inheritance whereof ſhe demandeth dower, &c. But know, That ſuch charter, or charters, ought

H. 7 E. 3. Dow. 101. M. 2 H. 7. 6.

to

to concern the title which he hath by deſcent, &c. Otherwiſe it is no plea.

357 And ſuch cauſe is not ſufficient for the heire to detaine Dower of more land than the Charter doth concern, &c. And if in ſuch caſe ſhe do detain a deed which doth belong unto the heir by reaſon of a reverſion which deſcended unto him, It is a good cauſe for the heir to detain her dower in the ſame land: but the detaining of Charters concerning land of which the heir is not ſeiſed, is no cauſe for to detain her dower of the ſame land. H. 22 H. 6. 42. M. 33 H. 6. 41. M. 22 H. 6. 16.

358 And therefore if a woman bring a writ of Dower againſt the Feoffee of her husband, and Feoffee voucheth the heir of the Husband to warranty, if the heire enter into the warranty, and pleads ſuch matter, it is no plea; becauſe he is no Tenant of the land, & therefore the deed doth not belong unto him: And for the heir who cometh into Court as tenant by receipt, ſuch matter is no plea, becauſe the deed doth belong unto another as well as unto him. 16 Ed. 3. Dower 47. M. 18 E. 3. 55.

359 But if there be two coparceners of land, and after partition made betwixt them their mother bringeth a Writ of dower againſt one of them, it ſhall be a good plea for her to plead a detainer of the deed by the demandant, which deed concerneth the inheritance whereof ſhe demanderh dower, notwithſtanding that the deed doth concern as well the inheritance of her ſiſter, as her own inheritance, &c. T. 7 E. 2. Dow. 150. P. 41 E. 3. 11.

360 But if a man ſeiſed of lands in fee take a wife, and he hath iſſue a daughter, and dieth, his wife young with child, and the daughter entreth into the land, in ſuch caſe ſuch detainer M 6 E. 2. 45. P. 1 E. 3. 12.

of evidences by the wife as before is said, mutatis mutandis, shall be no cause for the daughter to detain her dower, and the reason is, because it may be, that the wife is with child of a Son, &c. And know, That the detainer of a transcript of a Fine from the heir by the wife, is not a sufficient cause to detain her dower. And it is to know, that no person shall justifie the detaining of a dower, but the heire, and then the same ought to be in manner and form as is before said.

T. 11 H. 3. Dow. 187. 361 And therefore it is well shewed and declared in the Annotations in Natura Brevium upon the writ of Dower, That the Guardian in Knights service cannot detain the power of the wife for the detaining of Charters concerning the inheritance of the heir. But the gardian in knights service may justifie the detainer of Dower, for obtaining of the wardship of the body of the heir. And if a woman take away the Infant, and deliver him to another man, yet it shall be a good cause for the Guardian to detain her dower for the wrong done unto him, &c. if she cannot deliver the Infant to him, in as good plight as he was when he was taken away, viz. unmarried, if he were unmarried at the time of the taking away.

M. 8 E. 3. 47.

6 Ed. 2. Dow. 144. 57 H. 3. Dow. 174. 362 But if a woman as his Mother doth bring up or nourish her child, because he always remained & dwelt with her husband, and with her from the time of the death of her husband; and another man claimeth to have the wardship of the infant, because (he saith) his father held of him by knights service, & taketh the child out of the custody or possession of the woman, this is no cause for the rightful guar-

dian

dian in Knights ſervice to detain her dower.

363 If an Infant be dwelling wᵗʰ a ſtranger, and there brought up, at the time of the death of his father, & his mother taketh him from thence, & afterwards the ſtranger takes him again out of her poſſeſſion, ſo as ſhe cannot deliver the Infant unto the Guardian in Knights ſervice, it is a good cauſe for to detain her dower, for the wrong which ſhe did, viz. the eſſoigment, at what time ſhe was tenant to his action, as unto the wardſhip of the body, and ſuch matter may the Guardian in Knights ſervice plead, notwithſtanding that he cometh into Court by the Voucher of the Infant being in his ward, for the wardſhip of the Infant by right doth not appertain unto any perſon but unto him, if it be not by grant or agreement, &c.

364 And it is to know, That notwithſtanding a woman will not go unto her huſband into another County where he dwelleth, nor when he is wounded, & notwithſtanding that he dieth of the ſame wound, ſhe will not bring an appeal of his death, yet ſhe ſhall be endowed.

365 But quære, if the Husband lye ſick in his houſe, where he & his wife are both dwelling, and his wife will not come to him in his ſickneſs, if ſhe ſhall have dower: and notwithſtanding that a woman being in a frenzy, & of unſound memory, kill her husband, or another man or womã, ſhe ſhal not forfeit her dower, &c. 12 H. 3. Dow. 183.

366 And it is to know, that the husband by his act may prejudice the wife in her dower, by his lacheſſe of entry, by his lacheſſe of ſuit, or by his lacheſſe of pleading, and by divers other

other acts as shall be said: Know, that when no possession was in the husband, either in deed or in law during the marriage there the laches of entry of the husband shall prejudice the wife of dower, if not that it be in special cases: and therefore if a man seised of one acre of land in fee, be disseised of the same acre, and taketh a wife and dieth before his entry, his wife shall not have dower.

P. 1 H. 7. 17.

P. 21 E. 4. 60.

367 And if a man dieth seised in fee, and a stranger doth abate in the same land, and after the abatement the heir marrieth a wife, and dieth before his entry, his wife shall not have dower of the same land.

368 And if a man enfeoffeth a stranger upon condition on the part of the Feoffee, and the Feoffor marrieth a wife, and the condition is broken, and the Feoffor dieth before any entry made by him, or by any other in his name, his wife shall not have dower of the same land.

369 And if I. S. seised in fee of one acre of land, exchanges the same acre with T. K for another acre in fee, and I. S. entereth and executeth the exchange for his part, viz. for the acre which was put in exchange to him, and T. K. taketh a wife, and dieth before that he entereth by force of the exchange, his wife shall not have dower of the one acre or of the other, &c. And the reason is, because the husband was not seised of that land, either in deed, or in Law, during the marriage betwixt them, &c.

370 And if a man hath judgement for to recover land, &c. and marrieth a wife, and dieth before entry or execution sued, his wife shall

shall not have dower, &c. But if the husband be seised in deed, or in law, during the marriage, then his laches of entry shall not prejudice the wife of her dower.

371 And therefore if there be Lord and Tenant, and the Lord marrieth a wife, and the Tenant dieth without heir, and a stranger abateth, and the Lord dieth before his entry, his wife shall have dower of the tenancy.

372 And if land be leased for life, the remainder unto I. S. in fee, and I. S. marrieth a wife, and the Lessee dieth, and a stranger entreth, and I. S. dieth before any entry made by him, &c. his wife shall have dower of the same land, &c. And if a man be seised of a Villain in grosse in fee, and the Lord of the Villain hath issue a son, which son marrieth a wife, and the father dieth, and the son dieth before any seisure of the Villain, yet his wife shall be endowed of the Villain, &c.

373 And if a rent be granted unto a man in fee, and the Grantee doth accept of the grant, and taketh a wife, and at the day of payment, the Tenant of the land doth render the rent unto the husband, and he will not receive the same, but utterly refuseth the same, and dieth before any receipt of the rent by him, or by any other in his name, or for him, &c. and before any thing paid unto him in name of seisin of the rent, &c. yet the wife shall have dower of the rent, &c. But if in the same case, the husband had brought a Writ of Annuity against the Grantor of the same rent, and had recovered in the same action, then the wife shall not have dower thereof &c. T. 11 H. 4. 88.

374 And it is to know, That the Husband may

may prejudice the wife of her dower, by laches of suit. And therefore if there be Lord, Mesn, and Tenant, and the Tenant doth cease, and the Mesne taketh a wife and dieth, his wife shall not have dower of the tenancy, notwithstanding that her husband had cause of action for the tenancy, &c. and if a man seised in fee of one acre, leaseth the same acre unto a stranger for life, and after the Lessor taketh a wife, the Lesse doth commit waste, and dieth, his wife shall not have dower of this land.

375 And if there be husband and wife, and the husband is seised of one acre of land by wrong title, and is impleaded of the same acre by him that hath right, who voucheth a stranger to warranty, who entreth into the warranty & loseth, & each of them hath judgement for to recover against the other, and the demandant entreth, &c. and the husband dieth before execution sued against the Vouchee, his wife shall not have dower of this land, notwithstanding that the heir of the husband sue for the execution, and this land cometh in lieu of the Land which the Husband was seised of during the marriage betwixt him and his wife, &c.

376 And it is to know, That for laches of pleading, the husband shall not prejudice his wife of her dower, if not, that it be in special cases. Notwithstanding that the Statute of Westm. 2. cap. 4. recite, Quod si vir implacitatus de tenemento reddat tenementum penitus adversario suo de plano, post mortem viri sui, Justiciar. adjudicient mulieri dotem, si per breve petat, &c. that is but a recital of the common Law, for the Common Law ought to be intended where

where the husband had right, and he who recovereth no right. And so is the Law at this day, if the husband lose by default, &c. And so was the common law before the making of ỳ statute, so that that statute is but an affirmance of the common Law in that point.

377 And therefore at the common Law before the making of that Statute, if a man had been seised of land in fee by a rightful title, taken a wife, and is disseised, and re-entreth upon his Disseisor, and his Disseisor bringeth an Assise against him, and he confesseth the disseisin, and the Disseisor releaseth the damages, and hath judgement to recover, and entereth, and the husband dieth, his wife shall recover her dower against him, who recovered in the Assise by the common law, because that her husband had right, and he who recovered, no right.

378 And if a disseisor be of land who taketh a wife, and the Disseisee releaseth all his right unto the Disseisor, and notwithstanding that, brings a writ of Entry in the nature of an Assise against the disseisor, and recovereth by default, and the disseisor dieth, his wife may recover her dower against the disseisee, because at this time her husband had right by the release, and the Disseisee no right.

379 But if he who recovereth by reddition or by default, had right, then it shall be otherwise. And therefore if the heir of a Disseisor of land be in by descent upon whom the Disseisee doth enter, and taketh a wife, against whom the heir of ỳ disseisor doth recovered by reddiō, or by default in a writ of entrry in ỳ nature of an assise, & the husband dieth, in this

case,

case, his wife shall not recover her dower by writ, because he that recovered had right unto the possession, according unto the nature of his action, and the Husband was not seised of other possession during the coverture, but of ỳ possession which is destroyed and defeated by the recovery, &c.

H. 14 h. 4. 31.

380 But if a man seised of land in fée, taketh a wife and is disseised, and the Disseisor dieth seised, and his heir is in by descent, upon whom the Disseisée doth enter, against whom the heir of the Disseisor doth recover by reddition, or by default in a writ of Entry, in the nature of an Assise, and the Husband dieth, the Wife shall recover her dower, &c. notwithstanding that he who recovered had right unto the possession, according to the nature of his action, &c. and the reason is, because the Husband had an ancient seisin during the coverture before the writ brought, in which the recovery was, by force of which seisin the wife had title to have dower, and the ancient seisin is not defeated, and destroyed by the recovery, &c.

H. 5 E. 3. 7.

381 And it is to know, If in a præcipe brought against the Husband, he plead misnosmer, which is found against him, by force of which the Demandant doth recover, such recovery shall not ouste the wife of her dower, if the Demandant had not right, &c and if in a Præcipe, &c. against the Husband, the Husband pleads joynt-tenancy, &c. which is found against him, by force of which the Demandant doth recover, this recovery shall not ouste the wife of her dower, unlesse the demandant had right.

382 And

382 And if in a Writ of Entry, en le poſt, P. 12 E. 4.
againſt the Husband, he voucheth himſelfe to Dow. 140.
ſave the taile: and ſheweth for cauſe, that his father gave the ſame land unto him in tail, &c. and that the reverſion is deſcended unto him from his father, &c. and the Demandant traverſeth the gift, which is found with him, by reaſon whereof he doth recover, and the Husband dieth: Now if the Husband had a releaſe of all actions, or of all the right of the Demandant to plead, and did not plead the ſame, his wife ſhall falſifie this recovery in a Writ of dower, &c.

383 And if Tenant in tail of land hath iſſue and dieth, and a ſtranger abateth and dieth ſeiſed, and his heir is in by deſcent, who taketh a wife, and the iſſue in tail bring an aſſiſe of Mordancester againſt the Husband who traverſeth the points of the writ which are found for the Demandant, by force of which he doth recover and entreth, and the Husband dieth. In this caſe it hath been ſaid, that the wife ſhall not recover dower of this land, before that this verdict be attainted by the heir in a Writ of Attaint, &c. Yet it ſeemeth ſhe ſhall falſifie this recovery in a Writ of Dower immediately after the death of her Husband: forasmuch as her Husband might have pleaded unto the action of the writ of the Demandant, and ſhe cannot have an Attaint, &c. And if ſhe ſhall ſtay until the heir have defeated the verdict by Attaint, then perhaps the heir will releaſe &c. or perhaps will not ſue an Attaint, and ſo the wife in deſpight of her ſhall loſe her dower, which is not reaſonable, when ſhe was once entituled to have dower by

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the poſſeſſion of her husband during the coverture, which poſſeſſion had never been avoided, if not by the Laches or pleading of the Husband, becauſe he might have pleaded unto the action of the writ of the Demandant, &c. tamen quære, becauſe that the judgement is given upon the verdict, within which verdict is found matter contrary and repugnant to the matter which ought to be pleaded to the action of the Writ, &c. But if the entry of the Demandant had been lawful, &c. then the Law is cleer, and without queſtion, that the wife ſhall not falſifie, &c. for then the Demandant had been remitted by his entry, &c.

384 If a Diſſeiſor be of one acre of land, and the Diſſeiſor dieth ſeiſed, and his heir entereth and taketh a wife, and the Diſſeiſee doth recover the land againſt the husband by default, in a writ of Entry ad terminum, qui præterijt, and the husband dieth, his wife ſhall falſifie this recovery in a writ of Dower, Cauſa patet.

385 And it is to know, that a Demandant in a Writ of Dower ſhall not falſifie a recovery had againſt her husband by default, for Laches of her husband in not pleading a plea, which goeth meerly in abatement of the writ, if not, that it be in ſpecial caſes: And therefore to ſay that her husband might have pleaded miſnomer, &c. or joynt-tenancy, &c. are not cauſes to falſifie a recovery, &c.

386 But if ſhe ſhew matter, proving that the Demandant had not right, nor cauſe of action, if not joyntly with a ſtranger, the which ſtranger by his deed of releaſe which ſhe sheweth forth; hath releaſed all his right unto her husband

husband (then Tenant of the land) before the action brought by the Demandant, &c. This is good matter to falsifie the recovery, for one moitie of land recovered, &c. So shall it be, of all such like cases, &c.

387 And it is to know, that if the husband commit treason, murder, or felony, for which he is attainted, the same shall ouste the wife of her dower, &c. But if after the attainder, the husband purchase a charter of pardon, now, of all such estates of inheritance whereof her husband is seised after the purchase of his pardon, &c. which inheritance the issue which by possibility he might have by his wife, might inherit by the Common law, &c. she shall have dower, if it be not of such inheritances before spoken of, in the Chapter of dower, and in other special cases. For notwithstanding that she was his wife at the time of the attainder, yet the issue which the husband might have had after the purchase of his Charter of pardon, is inheritable, &c. 13 Ed. 1. Dow. 172. M. 15 E. 3. Dower 68.

388 But if the husband be out-lawed in trespasse, &c. the same shall not ouste the wife of her dower, for by such out-lawry he shal not forfeit either free-hold or inheritance, &c.

389 If there be Lord and Tenant, and the Tenant take a wife, and afterwards ceaseth, upon which the Lord bringeth a Cessavit, and doth recover, and entreth into the tenancy, and the tenant vieth, It seemeth cleer, that the wife shall have dower, for no laches nor default can be deemed in ẏ wife as to the cessor. But some say, that the wife shall not have dower in this case, because that the cessor doth not lie in any act done by the husband, but

it is not his doing, and because it is given by the Statute of Gloucester, cap. 4. And if he die until it be recovered by judgement, let him be barred by the remnant.

390 But if there be Lord and Tenant, and the Tenant leaseth the Tenancy unto a stranger for years, and the stranger ceaseth, and the Lord recovereth in a Cessavit, and entreth, the Lesse shall lose his Terme, cauſa patet, &c. If there be Lord and Tenant, and the tenant taketh a wife, and alieneth the tenancy in Mortmain, or setteth a crosse upon it, and the Lord entreth, and the Tenant dieth, his wife shall have dower of the tenancy, &c.

P. 8 E. 3. 20. 391 If the husband of his own will goes into another Countrey which is inhabited of the Kings enemies, & there willingly dwelleth with them, and doth aid and assist them against our Lord the King, his wife shall lose her dower, &c.

392 If W. doth enfeoff R. upon condition, that if W. pay unto R. ten pounds at a day certain, that the feoffment shall be void, and if not, that it shall be of force, and R. taketh a wife, and at the day appointed W. doth not pay the money and afterwards W. dieth, and and by agreement betwixt the heirs of W and R. the heir of W payeth the money unto R by which the heir of W. hath the land, and afterwards R dieth, his wife shall have dower notwithstanding this acceptance of the money made by the husband Cauſa patet. For divers cases concerning Dower in the Chapter of Deeds, Mutatis mutandis. For other cases concerning Dower in the first Book of Mr. Littleton. And upon the writs of Dower in Natura

tura Brevium, with the Additions and Annotations, &c.

393 And because a woman who is entituled to have dower by the common Law, ought to have an assignment thereof made unto her. Therefore something shall be said shewing, what persons may assigne dower, and then of what things assignment of dower may be made, and then where the assignment of dower shall be good, notwithstanding that it be not made by metes and bounds, &c.

394 And it is to know, that assignment of dower made by a Disseisor is good, and shall not be avoided, if it be not be made by covin or fraud, as shall after be said, if the woman have right to have the thing in dower. T. 11 E. 4. 1.

395 But if a disseisor, abator, or intruder be of land by covin of the woman who hath right to have dower of the same land, and such Disseisor, Abator, or Intruder endow the same woman, the Disseisee who hath right unto the land, may avoid and defeat such dower, by his entry into the land, &c.

396 And if I. S. be tenant of land, unto which a woman hath right to have dower, and he is disseised of the same land by the woman and a stranger, or by the woman alone, and afterwards she endowed of the same land by one who is in the land by her, & the other joynt Disseisor, or by one of them, such endowment may be avoided by the entry of the disseisee, because she shall not take advantage of the wrong unto which shee her selfe was party, &c.

397 And therefore if the issue in tail doth disseise the discontinuee of his Father of the

Land entailed, and thereof doth enfeoff his Father, and his Father dieth, and the land descendeth unto him, yet he shall be remitted.

P. 7 H. 6. Causa patet. And if there be two or three or
34. dow. 2. more joynt-tenants of land, of which land a woman hath right to have dower, and one of the Joynt-tenants doth assign dower unto the woman according to her right, it is a good assignment, and shall binde his companions but if he had assigned a rent issuing out of ỳ same land unto the woman for her dower, his other companions shall not be distrained for the same rent, because he was not compellable by law to assign unto her a rent for her dower.

398 And if an assignment of rent be made unto a woman in allowance of dower which she ought to have of the same land by a disseisor, abator, or intruder, the Disseisee, or he

P. 10 F. 3. who hath right unto the land, shall not be
Dow. 189. bounden by such assignment, notwithstanding that it be without any covin of the woman, &c.

399 And if a man seised of land in the right of his wife, or joyntly with his wife, assigneth the third part of the same land to the wife for her dower, it is a good assignment, and the wife shall be bounden thereby, notwithstanding that the husband dieth living the wife for when the husband alone out of Court doth a thing, which he and his wife by law are driven to do, it shall be intended the act of the one and the other, if not ỳ it be in special cases, &c.

400 And if a man seised of 2 acres of land in fee, taketh a wife, and doth enfeoff a stranger of one of the acres with warranty, and dieth, and both acres are in one County, and the heire doth endow his mother of his acre in allow-

allowance of all her dower in both acres, it is a good assignment: for if the Feoffor had beene impleaded by the woman in a writ of Dower, he might have vouched the heire, and the Demandant shall recover against the heir conditionally, and so, &c.

401 And if the heir leaseth for life unto a stranger, parcel of the land which he hath by descent from his Father, and doth assigne unto his Mother parcel of the Land which he hath in possession in allowance of all her dower, as well for the land leased as for the land which remaineth in his possession, the assignment is good: And yet if the woman implead the Lesse by a writ of Dower, and he voucheth his Lessor, the wife shall not have judgement to recover against the heir, because he is not bound unto the warranty by his father, who was husband to the woman. Quære, if in such case, the Lesse voucheth the heir generally, and the heir enter generally into the warranty, then it seemeth that judgment shall be given for the demandant against the Voucher conditionally, &c. H. 3 H. 6. 17.

402 And if there be three or four several Feoffees of land of which a woman hath right to have dower. And one of them assign parcel of his land unto the woman for her dower in allowance of all the Free-hold which belonged unto her husband, and she agree unto such assignment: It is said, That this assignment shall discharge the other feoffees against the wife for any dower, and so it seemeth the Books, &c. But some have said the contrary, for they say, That they cannot plead this

matter against the woman in several writs of Dower brought by her against them, tamen quære. And the Feoffee who have allignment cannot come into Court and plead this matter in the Actions brought against the other Feoffees, because he is a stranger unto those actions, and there is not any means to bring him into Court, &c.

3 E. 3. Dow. 96. 403 And allignment of dower by the guardian in Knights service is good, if the woman hath right to have dower of the land: and if the woman hath not right to have dower thereof, yet it shall stand good untill it be avoided.

404 But the allignment of dower by a Guardian in Soccage is not good as it seemeth, because a writ of Dower doth not lie against him. The same law is of tenant by Elegit, Tenant by Statute Merchant, Tenant by Statute Staple, and by Lease for years, &c. But an allignment of dower made by him who hath the Free-hold is good, if it be of such a thing as may be assigned, and of which the woman hath right to have dower. And notwithstanding that the woman hath not right to have dower thereof, yet it shall stand good, until it be defeated and avoided, &c.

405 Now is to shew of what things an allignment of dower may be made. And as unto that know, That parcel of the thing to which the woman hath right of dower may be assigned unto her, except, that it be in speciall cases. And therefore if a woman hath right to have dower of lands, tenements, rents, commons, and such like, parcel of the same thing may be assigned unto her in the name of dower.

And

And it is not necessary or requisite that the third part of the thing unto which she hath right of dower be assigned unto her: For if the fourth part, the fifth part, or the moitie be assigned unto her in the name of dower, for all the free-hold which her husband had, and she agree thereunto, it is sufficient, and it is a good assignment, &c. 7 H. 2. rec. 95.

406 And it is to know, that the heir is not compellable to assigne unto his mother for her dower the capital Messuage which was his Fathers, or any part thereof, notwithstanding that his mother be dowable of the same Messuage. But if the heir do assigne unto her the same in allowance of other land, and she agreeth thereunto, the assignement is good. And the heir may assign unto her other lands and tenements whereof she is dowable, in allowance of the same Messuage, and if there be not any other lands or tenements whereof she is dowable besides the said capital Messuage, & the heir assigneth unto her a chamber in the same Messuage, in the name of dower, in allowance of the same messuage, and she agree thereunto, it is a good assignment. But it seemeth she is not compellable to take the same because the Messuage is as it were an entire thing, &c. And it shall be but trouble and vexation unto a woman, to have a chamber within the house of another man, and if she will not agree unto the same, then the heir may assigne unto her a tenement lying out of the same Messuage in the name of her dower, &c. And such assignment is good without deed. And the same law is of assignment of a common of Estovers, or of common of pasture, &c. If

of any other thing whereof a woman is dowable.

407 But lands or tenements, whereof a woman is not dowable cannot be assigned unto her in the name of her dower in allowance of other Lands or Tenements whereof she is dowable, &c. mutatis mutandis, &c.

408 And it is said, that all the land which the husband had in possession during the coverture cannot be assigned unto her in the name of dower, notwithstanding that the husband were seised of such an estate during the marriage, that the issue which by possibility they might have betwixt them, by possibility might inherit the same land, by the Common Law, &c.

409 And it is to know, that lands in Wales may be assigned unto a woman for her dower in allowance of all the free-hold of her husband, &c. And by this assignment she shall be excluded to demand dower of any other lands which her husband had within any place in England, &c.

P. 7 E. 3. 9. do. 103.

410 If a woman bring a writ of Dower, &c. and hath judgement for to recover, and between the judgement and execution the Tenant assign unto her a rent by word issuing out of the same land, whereof she demandeth dower, in allowance of her dower for the same land, to which assignment she doth agree, it shall be a good bar in a Scire fac. brought by the woman to have execution of the land recovered, &c. But in the same case, if the assignment had been by word of other land, whereof she is not dowable, which land is not comprised within her demand, it is said that such assignment

P. 31 E. 3. Scir. fac. 99.

ignment ſhall not be a barre in a Scire Facias brought by the ſame woman to have execution of the judgement given in the writ of Dower, &c. becauſe it is not purſuing unto the Judgement, and becauſe it is by word, &c. and this ſeemeth to be good Law, &c.

411. It is a common ſpeech, That the dower of a woman ought to be aſſigned unto her by metes and bounds, if not that it be in the caſe of Tenants in common, &c. which is put in the Chapter of Dower in the firſt book of Mr. Littleton. And yet in divers caſes aſſignment of Dower may be made without metes and bounds.

412. And therefore if there be two men coparceners of lands in fee-ſimple by the cuſtom of Gavelkind, and one of them taketh a wife, and hath iſſue, and dieth before partition, &c. and his iſſue entereth and endoweth his Mother generally of the third part of the moitie, and ſhe agree thereunto, it is a good endowment, and yet it is not aſſigned by metes and bounds, and by ſuch aſſignment ſhe ſhall hold 8 E. 2. a common with other coparceners. And in Entre 75. the ſame caſe by one Mean, the iſſue might have aſſigned unto the woman her dower in certain, viz. by metes and bounds. For if hee had made partition with his Uncle before the aſſignment might have been by metes and bounds: But notwithſtanding that, it is M. 16 E. 3. 91. well in the manner and form as it is made, as before it is ſaid.

413. And it hath been holden, if the heire enter, &c. and aſſigneth unto his mother the third part throughout the whole land, which was his fathers, to occupie y ſame in common,

of

of which land she was dowable, and she by force thereof entreth and occupieth the same with him, it is a good endowment, tamen, it seemeth at this day the Law is otherwise, Ideo quære, &c.

414 But if a woman bring a Writ of dower of land, and recover her dower, and sueth forth a writ unto the Sheriff to put her in execution, &c. the Sheriff ought to put her in exception of the third part by metes and bounds, if he may so do, &c.

33 H. 3. Dow. 203. 415 If a woman be endowed of the third part of the profit of a Mill, that is not certain, and yet it is good: and shee shall grinde there toll-free, the same Law is of a Bailywick, mutatis mutandis, &c.

416 And it is to know, That if a man be seised of three shillings of a rent-charge in fee, and taketh a wife, and hath issue and dieth, the wife cannot distrain for the third part of this rent before assignment made, and yet it certainly appeareth what rent she is to have, &c. And notwithstanding that she bring a Writ of Dower of the same rent, and recovereth; yet she can distrein for no rent behind after the Judgement before execution sued, notwithstanding that the certainty thereof doth appear. And how and in what manner the Sheriff shall put her in seisin thereof, see in the Chapter of Feoffments, mutatis mutandis, &c.

40 E. 22.

417 And if there be Lord and a woman tenant by Fealty and three shillings rent, and they enter-marry, and the Lord dieth, the wife shall have twelve pence of the rent for her dower of the Seigniorie by way of retainer,

&c.

&c. without any manner of alligniment made by any person, &c.

418 And it is to know, That sometime a woman shall be new endowed. And as to that know, that when the Lands, Tenements, &c. are lawfully devested out of her possession, and in default of her, she shall be new endowed of the third part of that whereof both remain in which the fee in whereof she is dowable, is not defeated or avoided, if not, that it be in special cases, &c.

419 And therefore; If a man be seised of two acres of land in fee by rightful title, and is seised of another acre of land by disseisin, and taketh a wife and dieth, and the heir entereth and alligneth the acre which his Ancestor had by disseisin unto the wife in the name of dower, in allowance of all the free-hold which her husband had, &c. And the Disseisee doth enter into the acre alligned unto her, and puts her out, she shall be new endowed of the third part of the two acres which her husband had by rightful title, in such manner, as if the other acre had never been in the possession of her husband, &c.

420 And if Tenant in tail be of land, and tenant doth make a discontinuance in fee, and the discontinuee taketh a wife, and hath issue and dieth, and the Discontinuee is not seised of any thing during the coverture, of which his wife is dowable, and his issue entereth against whom his Mother bringeth a writ of Dower, and doth recover, and hath execution of third part by metes and bounds, and the issue in tail bringeth a Formedon against the Tenant in dower, and he voucheth the issue of

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the Discontinuee, who entreth into the warranty, and loseth, and the Demandant hath execution. Now, the Tenant in dower shall be new endowed of the third part of the two parts which remain, &c. notwithstanding that his issue hath enfeoffed a stranger of part thereof, or of all: For notwithstanding that the possession which her husband had (whereof she is dowable) be defeasible, yet she shall have dower thereof until it be defeated, &c.

43 Ass. p. 32.

421 If a man seised of two acres of land in one County, takes a wife, and enfeoffeth a stranger of one of the acres with warranty, and hath issue and dieth, and his issue entreth into the other acre, and the wife brings a Writ of Dower against the Feoffee, and he voucheth the issue, &c. who loseth by default, and the wife hath judgement conditional, viz. To recover against the Vouchee, if he, &c. and the Demandant sueth execution accordingly, and she is put in execution of land, which the Vouchee hath by descent in the same County where the dower is brought, as heir to her husband, of which land she is dowable, and the tenant holdeth in peace, and the Vouchee is restored to the land wch the wife recovered by a Writ of Deceit, in this case the wife shall have a Scire facias against the Feoffee who was tenant in the writ of Dower; and notwithstanding that ȳ tenand hath enfeoffed a stranger of the same land before the Scire facias brought against him, yet his Feoffee shall be bounden by the judgement given in the Writ of Dower, because that the judgement in the Writ of dower was given of the land conditionally, &c.

8 E. 2. Vou. 157.

M. 3 E. 3. 50.

422 A

422 And if a man seised of land in fee taketh a wife, and hath issue, and dieth, and the wife take a second husband, and the issue entreth into the land as heir unto his father, and doth assign the third part thereof by metes and bounds to his mother by the agreement of her husband for her dower, in allowance of all the free-hold which his father her late husband was seised of, and her husband which now is doth discontinue the same land in fee, and dieth, the wife may have a cui in vita against the Discontinuee of this land: and it hath beene holden, that she may refuse it, and be new endowed according unto the value of the whole land, which was in the possession of her husband during the coverture, of which possession she was dowable, &c. tamen quære, because the same woman with her Husband might have compelled the issue to have endowed the same woman by a writ of Dower. And if they have done so, she shall not be new endowed. But there appeareth a difference in this case, where she is endowed by writ of Dower, and where by the assignment of the heir, or by another person, without writ of Dower, &c. T. 4 E. 3. 36. H. 33 E. 1. Dow. 177.

423 And it is to know, That if the Freehold whereof she is dowable, be in the possession of divers persons by several titles; the wife in a writ of dower brought against one of them, shall recover but the third part of the free-hold which is in his possession: So that a man or a woman who hath possession of part of the free-hold (of which the woman is dowable) shall not be charged according to the possession of the whole free-hold of which the woman is dowable, unless he or she will.

424 Nota

244 Now is to shew, unto what person the tenant in dower shall be attendant, and for what services. And as unto that, know, that Tenant in dower for the most part shall be attendant unto him in the reversion, &c. And also she may be attendant unto Guardian in Knights service, and unto his executors during the time the heire of her husband is in ward, &c. And she shall be attendant unto them, &c. by the rate and portion of the rent as the Land doth amount unto which she holdeth in dower, if not, that it be in special cases, &c.

P. 33 E. 3. Dow. 138. 425 And therefore if there be Lord, Mesne, and Tenant, by Knights service, and 3 shillings rent, and the Tenant taketh a wife, and hath issue, and dieth, his issue being within age, and the Mesne seise the ward of the body, and of the land, and entreth into the tenancy, and doth assigne the third part of the tenancy by metes and bounds unto the woman, mother of the ward for her dower, she shall be attendant unto the Guardian in Knights service by twelve pence rent: and if the Guardian die during the nonage of the heir, then she shall be attendant unto the Executors of the Guardian by twelve pence rent, until the heir shall come of full age, and when the heire cometh to his full age, she shall be attendant unto him by 12 pence, &c.

12 Ass. p. 20. 426 And if there be Lord and Tenant, by Fealty and twelve pence, and the Tenant taketh a wife, and hath issue, and is disseised of the tenancy, and dieth, and the Disseisor doth endow the wife, Now she shall be attendant unto the Disseisor by four pence. But if the

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iſſue brings a Writ of Entre ſur diſſeiſin en le quibu against the tenant in dower of the land, which is holden in dower, and ſhe ſhew forth the ſpecial matter, and ſaith, that ſhe claimeth nothing in the land, but in right of her dower, and that ſhe is ready to be attendant to whom the Court ſhall award, &c. In this caſe the Court ought to award, that ſhe ſhall retain the land demanded for her dower, and that ſhe ſhall be attendant unto the heir who is the demandant, and by this judgement the reverſion is in the Demandant, and not before, and it ſeemeth the Demandant hath not other remedy in this caſe to come to the reverſion of the land which the wife holdeth in dower, &c. For if he had entered upon the tenant in dower, &c. he might have had an Aſſiſe, and recovered, becauſe ſhe had right to have dower, &c. and ſhe cannot at the time of the aſſignment made demand dower thereof of any perſon, if not againſt the Diſſeiſor who made the aſſignment, &c. And the aſſignment was not made by Coſin, &c. tamen quære, if he had any other remedy to come to the reverſion, &c. But now the wife ſhall be attendant unto the heir by force of the judgement, &c. and not unto the Diſſeiſor, &c.

427 And in the ſame caſe, the heir cannot enter upon the Diſſeiſor, and put him out of the other two parts of the tenancy &c. And if he grant the reverſion of the Tenant in dower unto a ſtranger, and the Tenant in dower attorn, ſhe ſhall be attendant unto the Grantee, cauſe patet. H. 32 E. 3. Dow. 131.

428 If there be Lord, Meſne, and Tenant, and the Tenant holdeth of the Meſne by three

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pence, and the meine holdeth over by 20 pence, and the Tenant taketh a wife, and the Meine doth release unto the tenant all the right which he hath in the tenancy, &c. and the Tenant dieth, and his wife is endowed by the heir of the third part of the tenancy: she shall be attendant unto him by one peny, and not by the third part of the twenty pence, because that she shall be endowed of the best possession which her husband had during the coverture, &c.

429 Lord and Tenant are by fealty and 12 pence, the tenant taketh a wife, and the Lord purchaseth the tenancy in fee, and the estate is executed in him, and the tenant dieth, and his wife is endowed of the third part of the tenancy, now she shall not be attendant for any rent, because that by the purchase of the tenancy in fee by the Lord, the Seigniorie is determined, and a thing which is determined, cannot be revived.

430 Lord, Meine, and Tenant are by fealty and twelve pence, the Tenant taketh a wife and dieth, and his wife is endowed of the third part of the tenancy by the heir of the husband, she shall be attendant unto him for four pence: But if in the same case the Lord paramount releaseth unto the heir all his right in the tenancy, by this release the Menaltie is determined, and therefore the wife shall not be attendant unto the heir for any rent after the release, &c. because she was attendant unto him but in respect of his charge over, &c.

H. 3 E. 3. 9

431 But if Lord and Tenant be by fealty and twelve pence, and the tenant giveth the tenancy unto I. S. in taile, to hold of him and

P. 18 E. 3. 26.

his

his heirs by fealty and twenty ſhillings rent, and I. S. takes a wife and dieth without iſſue, and the Donor entreth and endoweth the wife of the Donée, &c. ſhe ſhall be attendant unto him for 6 s. 8 d. For if the husband had been living, he ſhould hold all the land by twenty ſhillings, &c. and ſhe is endowed of the poſſeſſion of her husband, &c. And ſhe in this caſe ſhall not be attendant unto the Donor in reſpect of an over-charge: But ſhee ſhall be attendant unto him by reaſon of a ſpecial reſervation made by the donor, &c. And when ſhe had the third part of the land, out of wch the reſervation was made, it is reaſon that ſhe ſhould be attendant for the third part of the rent which was reſerved, &c. And if in the ſame caſe the Lord releaſeth all his right in tenancy, unto the tenant who was Donor, yet ſhe ſhall be attendant unto the Donor for ſix ſhillings eight pence, &c. 34 Aſſ. p.

432 If there be Lord, Meſne, and tenant, and the tenant holdeth of the Meſne by fealty and 3 s. rent, and the meſne taketh a wife, & the tenant bringeth a Writ of Meſne againſt the Meſne, and fore-judgeth him, & the meſne dieth, the wife of the Meſne ſhall have dower of the rent by which the tenant held, and ſhall not be attendant unto the tenant, cauſa patet.

433 And if Lord and Tenant are by fealty and 12 pence and the tenant giveth the tenancy in taile, reſerving twelve pence, and the Donée taketh a wife, and hath iſſue, and diſcontinueth the land in tail in fée, & dieth, and his wife bringeth a writ of dower againſt the diſcontinuée, and recovereth, and hath execution: ſhe ſhall not be attendant for any rent unto

the Discontinuee, for she is not chargeable in the same course her husband was, for the Donor cannot avow upon her for the rent reserved, &c. But he may avow for the same upon the issue in tail notwithstanding the discontinuance. and yet the wife shall not be attendant unto the issue in tail, until he hath recontinued the estate tain, &c. tamen quære.

234 Lord and Tenant are by fealty and a horse price forty shillings, and the tenant taketh a wife, and dieth, and his heir entreeth into the tenancy, and endoweth the wife of the third part thereof, she shall be attendant unto the heire for thirteen shillings four pence. But if the tenant had been by fealty and a horse to be rendred yearly, &c. without limiting or making mention of what value the horse should be, &c. in that case the wife shall be attendant unto the heir in rendring unto him every third year a horse, &c. The same law is of other things entire, Mutatis mutandis, if not that it be in special cases.

435 And as to dower by the custome, sufficient thereof hath been shewed by Mr. Littleton in his Chapter of Dower, and in Natura Brevium with the additions upon the Writs of Dower, But it is to know, If the custom be that a woman shall have for her dower the moitie of lands and tenements which were her husbands holden in Soccage within such a precinct, &c. If the husband have a Bailywick, &c. or a Fair, &c in fee during the coverture within the same precinct, the wife shall not have dower, because it is no Tenement, &c. And a custome shall be taken strictly.

436 But

436 But if the husband hath a Bailywick, &c. or Fair, &c. as appendant unto his Manor within the same precinct of which Manor the husband was seised in fee during the coverture, and held the same in Soccage now if the wife be endowed of the moitie of the Manor by the custom, she shall have the profit of the moitie of the Bailywick, or of the Fair as appendant unto the moitie of the Manor: But Quære, if the Bailywick or Fair be disappendant in fee from the Manor, after the death of the husband, and before the endowment, whether she shall then have the profit of the Bailywick or Fair, &c. But it seemeth she shall have the same because she shall be endowed of the best possession which her husband had during the coverture or marriage, &c. 11 E. 3. Dow. 85.

437 Of Dower ad ostium Ecclesiæ, a good Declaration hath been made by Mr. Littleton, in his first Work, in the Chapter of Dower, and in Natura Brevium, with the Additions: and it is said that such endowment is good without deed, as well of lands lying in another County, as of lands lying in the County where the marriage is solemnized, because such endowment ought to be made after the contract made at the Church door, if it be the custome so to do, for then they are husband and wife, and the husband cannot make a deed unto his wife, nor cannot make livery of seisin unto his wife to make her to be in the land by the same husband. And because it is not requisite that the lands be with the view &c.

438 If an Infant at the age of eight years endow his wife ad ostium Ecclesiæ without deed, such endowment is void, notwithstand-

ing that he assent and agree unto the marriage, after his age of fourteen years, for a void thing cannot be made good. For notwithstanding that the marriage was good and effectual until disagreement, yet such endowment made by him at such age, whereby his inheritance shall be bounden, is not good, &c.

439 And such endowment made De Capitali Baronia, tent. de Rege in Capite, or De Capitali Messuagi feodi militis is not good. And it hath been holden, that if a man assigne unto his wife when he espouses her, at the Church doore, &c. the moitie of all his lands and tenements which shall come unto him in fee, during the coverture. and afterwards during the coverture, he purchaseth lands or tenements in fee, and dieth, That the wife shall have the moitie of those lands by force during the assignment, &c. tamen quære.

M. 4 H. 3. Dow. 118. T. 9 H. 3. Dow. 190.

440 The same law is, If a man endow his wife, ad ostium Ecclesiæ, of such lands which his Mother holdeth in dower, the reversion to him in fee, upon condition, that if his mother dieth, during the marriage betwixt them, that then his wife shall have all the lands for her dower, and after his mother dieth during the marriage betwixt them, &c.

P. 14 H. 3. Dow. 189.

441 And as unto Dower, ex assensu patris, it hath been spoken of by Mr. Littleton in his first Book of the Chapter of Dower, and in Natura Brevium, with the Additions upon the Writs of Dower. And it is to know, That so and in the same maunes as there is dower ex assensu patris, in the same manner and forme there is dower ex assensu matris, mutatis mutandis.

P. 8 H. 3. Dow. 103.

442 But

442 But there is no dower, ex assensu fratris nec consanguinei, and the wife ought to have a deed of the father or mother, proving his assent & consent, for his free-hold shall be bounden thereby, and livery and seisin shall not be made thereof: And the Father may well make such a deed unto his sons wife, &c. And yet in ancient Books, such assent and consent hath been tryed by proofs, but the law is contrary at this day. And such endowment ought to be made immediately after affiance made betwixt them at the Church door, or in the Church if the marriages are used to be in the Church, &c. M. 20 E. 3. Dow. 134. M. 40 E. 3. 41.

443 And yet it hath been holden in ancient Books, That where the son is heir apparent unto his father (and so he ought to be for such endowment made unto the wife of the second son is nothing worth) if he marrieth against his fathers will, and afterwards within eight weeks after the marriage, the same son endow his wife with the assent of his father of the lands and tenements of the father, &c. It was holden that the same was a good endowment, &c.

444 And it is to know, that where the endowment ex assensu patris, vel matris, is good and sufficient in Law, the wife of the son immediately after the death of her husband, in the life of the husbands father, may enter into the same lands so assigned unto her in dower, &c.

445 And know, That if there be father and son, and the father is seised of land in fee, and leaseth the same land unto a stranger for life, and afterwards the son taketh a wife, and endoweth

doweth her, ex assensu patris, of the reversion of the same land, and after the Lesse dieth, and the father entreth into the land seised, and the son dieth: The sons wife shall not have dower by force of this assignment, because that at the time of the assignment and assent, the wife was not dowable of the reversion by the Common Law, notwithstanding that the reversion had been in the possession of her husband, and notwithstanding that the free-hold and the fee are in the father of the husband, simul & semel, during the life of her husband, this matter shall not help the wife, for the title of the wife by force of such endowment did not begin after such endowment and assent of the Father, &c. nor before such endowment and such assent, but took all its effect onely at the same time.

446 The same law is, if the son endow his wife with the assent of the father, of lands of the father which he held joyntly in fee with a stranger at the time of his assent, &c. So shall it be if such endowment be made of lands or tenements which the father holdeth for the term of his life, at the time of such endowment.

447 But if the father had been seised in tail of such lands, whereof such endowment is made at the time of his assent, &c. he shall be bounden thereby, during his life; But the issue in tail shall not be bounden thereby, nor a woman who hath title to have dower of ȳ same land before the assent, &c. As the fathers wife which he had at the time of the assent, nor any stranger who have ancienter title to the same land, &c. shall be bounden by such endowment or assent, &c.

448 And

448 And it hath been holden, If there be father and ſon, and the father is ſeiſed of land in fee with his wife, in the right of his wife, and the ſonne endoweth his wife of the ſame land with the aſſent of the father, and the ſon dieth living his father, that the ſons wife ſhal not have dower of this land againſt the father, yet the father may make feoffment of the ſame land, during the coverture between him and his wife, and it ſhall be good againſt him; and it hath been ſaid that it is, becauſe that in ſuch caſe the husband doth preſently diſmiſſe himſelfe of the poſſeſſion, but in the other caſe he remaineth ſeiſed of the ſame land during the coverture, and in the right of his wife, and when this matter doth appear unto the Court. The Court who is a third perſon ſhall barre the ſons wife of her dower, becauſe otherwiſe the Court ſhould do wrong unto the wife of the father, tamen quære, for that the father cannot plead ſuch matter; but if it be in an action in which receit lyeth, if the wife be received upon the default of her husband, ſhe may plead this matter, &c. Yet notwithſtanding that ſhe is received, it ſeemeth, That upon the matter of Law, the Sons wife ſhall have the dower which was aſſigned unto her by her husband with the aſſent of his father, &c.

449 For if a man be ſeiſed of land in fee in the right of his wife, and he & his wife grant a rent-charge out of ꝑ ſame land unto a ſtranger in fee, and the Grantee is ſeiſed thereof, and afterwards he diſtraineth for the rent, and Reſcous is made by the Grantor, and he bring an aſſiſe of the ſame rent, &c. and the wife of the Grantor be received, notwith-

ſtanding that ſhe hath nothing in the rent, &c. upon the default of her husband, and pleads the ſpeci l matter; yet notwithſtanding the Plaintiff ſhall have judgement to recover, &c. And yet in the ſame caſe the husband continueth poſſeſſion in the land, out of which the rent was iſſuing, in the right of his wife, &c. But notwithſtanding that, the grant is good, at the leaſt during the coverture betwixt the husband and his wife, &c.

450 Dowment of the moſt fair part is in ſuch manner and forme, as Maſter Littleton hath ſhewed in his firſt book in the Chapter of Dower: And it is to know, that if in ſuch caſe the lands which ẏ woman hath as Guardian in Soccage, be not of value to make ſuch endowment, or if a rent-charge be iſſuing out of the ſame land, which rent had his beginning before the woman had title to have dower, &c. and by reaſon of which rent or, &c. the lands which ſhe hath as Guardian in ſoccage be not of ſufficient value to make ſuch endowment, then the woman by way of replication may ſhew this matter againſt the Guardian by Knights ſervice, &c. And if ſhe do ſo, and the Guardian by Knights ſervice cannot deny it, &c. or traverſeth the ſame, which by verdict is found for the woman; then the woman ſhall recover ſo much of the lands holden in Knights ſervice, as ſhall amount with the lands holden in Soccage unto the value of the third part of the lands holden in Knights ſervice and in Soccage, if the caſe ſo require, &c.

451 But if all the lands which the husband had were holden in ſoccage, &c. and his wife hath

hath them as Guardian in Soccage; she shall be allowed of the third part of the profits upon her accompt, in allowance of her dower in the meane-time: But in such case shee shall not endow her self of the third part of the Lands or Tenements, to hold as her Free-hold, &c.

452 And if in the same case the woman Guardian in soccage bring a Writ of Dower against the heir, it is no plea for the heir to say, that she is Guardian in soccage, and may endow her self, &c.

453 And if a woman guardian in soccage, bring a writ of Dower against the Feoffee of the husband with warranty, the Feoffee cannot shew the special matter, and pray that the Court would award, that she may endow her selfe of the fairest part, &c. because that the feoffee may vouch the heir. But the Guardian in Knights service may so do, &c.

454 And it is no good plea for the Guardian in Knights service to say, that the woman who is Demandant in the Writ of Dower, was seised of certain lands and tenements as Guardian in soccage; and pray the Court that she may endow her selfe of the most faire part thereof, &c. Caula patet. But Quære, if he say, that the woman was seised of lands and tenements, &c. as Guardian in soccage at the day of the purchase of the writ; it seemeth the same is a good plea, if the lands and tenements be not devested out of her possession by rightful title, and if it were so, yet the plea is good until this matter be shewed by the woman by way of replication, &c.

455 If

455 If a woman Guardian indeed in Knights ſervice of lands & tenements which were her husbands, doth bring a Writ of Dower against another Guardian in Knights Service, of lands and tenements which were her husbands, it is no plea for her to shew the ſpecial matter, and pray that it be awarded by the Court, that she may endow her ſelfe, of the moſt faire part, &c. because that she being Guardian in Knights ſervice, took the iſſues, profits, and revenues of her ſame lands unto her own uſe, &c.

CHAP.

CHAP. VI.

Tenant by the Courteſie.

456 MAſter Littleton in his firſt book in the Chapter of Tenant by the Curteſie, hath well declared of Tenant by the Curteſie, and hath alſo put a good maxime in Law concerning Tenant by the Curteſie in his chapter of Dower, &c.

457 And it is to know, That a man ſhall not be Tenant by the Curteſie of right onely, &c, nor of eſtates in ſuſpence, if not that it be in ſpecial caſes, &c. A man ſhall not be Tenant by the Curteſie, &c. of an uſe of lands or tenements, &c. A man ſhall not be Tenant by the Curteſie of a poſſeſſion in Law, &c.

458 And therefore, if a ſingle woman ſeiſed in fee of lands or tenements be diſſeiſed, and ſhe taketh a husband, and they have iſſue, and the wife dieth before any re-entry made, &c. the husband cannot enter the lands and tenements, and have them as tenant by the curteſie, becauſe there was but a right of entry or action,

action, &c. to him and his wife, during the coverture, as in the right of his wife: But if the wife during the coverture had entred into the ſame lands and tenements, her husband not knowing thereof, and the Diſſeiſor entereth during the coverture, and the wife dieth, the husband knowing of the entry of the wife, may enter and ouſte the Diſſeiſor of the ſame lands and tenements, and have and hold them during the term of his life, as Tenant by the Curteſie, &c.

459 If a woman be ſeignoreſſe, and a man be tenant, and they enter-marry, and have iſſue, and the wife dieth, the husband ſhall not be tenant by the curteſie of the Seignorie, becauſe the Seigniorie was in ſuſpence.

460 But if a ſingle woman hath common or rent in fee iſſuing out of land, &c. And the tenant leaſeth the ſame land unto a ſtranger for the terme of another mans life, and the woman marrieth with the Leſſee, for the term of another mans life, and afterwards the wife dieth, the husband ſhall be tenant by the curteſie of the common, &c. The ſame Law ſhall be if a woman hath House-boot and Hay-boot appendant unto her inheritance, mutatis mutandis, &c.

461 If a ſingle woman hath a rent-charge in fee iſſuing out of land, and the Tenant leaſeth the Land unto I. S. for twenty years, and the woman marrieth with the Leſſee, and they have iſſue, and the wife dieth within the Terme, Quære, if the husband ſhall be tenant by the Curteſie of the rent after the terme determined, &c.

462 If there be a woman Seignoreſſe, and tenant,

tenant, and the tenant doth enfeoff a ſtranger of the tenancy upon condition, and the woman Seignoreſſe marrieth with the Feoffée, and they have iſſue, and the condition is broken, and the wife dieth, and the Feoffor entreth upon the Feoffée, and putteth him out of the tenancy for the condition broken (during the coverture) yet the Feoffée ſhall not be Tenant by the Curteſie of the Seignorie, &c.

463 If a ſingle woman ſeiſed of land in fée enfeoffeth thereof a ſtranger unto the uſe of the woman and her heirs, and afterwards ſhe taketh husband, and they have iſſue, and the wife dieth before any eſtate of inheritance executed in the wife, during the coverture of the ſame land which was in uſe, the Husband ſhall not be Tenant by the Curteſie of the uſe, &c. And ſo ſhall it be of an uſe of other things inheritable, Mutatis mutandis, &c.

464 And if there be father and daughter, and the father is ſeiſed in fée of lands and tenements, and the daughter taketh husband, and they have iſſue, and the father dieth ſeiſed in fée of the ſame lands and tenements, and the daughter dieth before any entry made by her, or by her husband, or by any other perſon or perſons for them, the husband ſhall not be Tenant by the Curteſie of the ſaid lands and tenements, becauſe there was but a poſſeſſion in law of the lands and Tenements in his wife during the coverture, the ſame law is in all like caſe, &c.

465 And it is to know, That if before the

the Statute of Weſtm. 2. De donis conditionalibus, cap. 1. Lands have bin given unto the husband and his wife, and unto the heirs of their two bodies begotten, and the husband dieth: and she being ſeiſed of ſuch eſtate in the ſame lands and tenements, taketh another husband, and they have iſſue, and the wife dieth, the ſecond husband ſhall be Tenant by the Curteſie of the ſame lands, &c. notwithſtanding that the wife dieth after the ſaid ſtatute made, and the ſame appeareth by the word of the Statute, which are, Nec ſecundus vir, &c.

466 And it is to know, That if a ſingle woman ſeiſed of lands in fee taketh a husband, and hath iſſue, and the husband dieth; and ſhe being ſo ſeiſed, &c. taketh another husband, and hath iſſue by him, and the wife dieth living the firſt iſſue, yet the ſecond husband ſhall be tenant by the curteſie, &c.

467 If a ſingle woman ſeiſed of land in fee, leaſeth the ſame unto I. S. for term of life, and after ſhe marrieth with T. D. and they have iſſue, and the wife dieth living the Leſſee for life: the husband ſhall not be tenant by the curteſie of this reverſion: But quære, if the wife hath reſerved a rent, &c. unto her and her heirs upon the leaſe, whether the husband ſhall have the rent as tenant by the curteſie, or not. And if the Leſſee for life dieth, living the husband, he may enter into the land, and hold the ſame for the term of his life, as tenant by the curteſie, &c.

468 If there be father and daughter, and the father is ſeiſed of an Advowſon in groſſe, in fee, the daughter taketh a husband, and the father

father dieth, ſo as the Advowſon deſcendeth unto the daughter, and the daughter hath iſſue by her husband, and dieth, before that the Advowſon doth become void, yet the husband ſhall be tenant by the curteſie; and notwithſtanding that the Advowſon doth become void during the coverture, and the wife dieth after the ſix moneths paſt, and before any preſentment made by the husband, &c. So as the Ordinary doth preſent for lapſe unto this avoidance, yet the husband ſhall preſent unto the next avoidance, as tenant by the curteſie, &c.

469 If a rent do deſcend in fee unto a married woman, and ſhe dieth before any day of payment, yet the husband ſhall be tenant by the curteſie of the rent, notwithſtanding that there was not any ſeiſin of the ſame rent, during the coverture betwixt them, and notwithſtanding that the day of payment of the rent incurred in the life of the wife, and the wife dieth before any demand of the rent made by the husband, yet the husband ſhall be Tenant by the Curteſie, &c.

470 But if poſſeſſion in law of lands or tenements in fee deſcend unto a married woman, which lands are in the County of York, and the husband and his wife are dwelling in the County of Eſſex, and the wife dieth within one day after the deſcent, ſo as the husband could not enter during the coverture, for the ſhortneſs of the time, yet he ſhall not be Tenant by the Curteſie, &c. And yet according to common pretence there is no default in the husband. But it may be ſaid, that the husband of the woman before the death of the Anceſtor of the woman might have ſpoken unto a man dwelling

dwelling near unto the place where the lands lay to enter for the woman, as in her right immediately after the death of her Ancestor, &c.

471 And it is to know, That if the issue which the Husband hath by his wife be borne alive, notwithstanding it die before it be heard cry, and before it be baptized, if there be no laches in the Husband of the baptisme by reason of any contempt, &c. the Husband shall be tenant by the curtesie; but if such laches through contempt be in the Husband, some say the Husband shall not be Tenant by the courtesie, &c.

472 If a man seised of lands in fée as in the right of his wife, be disseised thereof before he hath issue, and afterwards he hath issue, and the wife dieth before any re-entry made, yet he may re-enter and have the land as Tenant by the curtesie, &c.

473 And if there be Husband and wife, and they have issue, and the issue dieth, and afterwards lands in Fée-simple descend unto the wife, and the Husband entreth, and the wife dieth, he shall be tenant by the curtesie, &c.

474 If the Husband before issue had, doth make a Feoffment upon condition on the part of the Feoffée of land which he holdeth in fee in the right of his wife, and afterwards he hath issue by his wife, and the condition is broken, and the wife dieth, now the husband may re-enter for the condition broken, and when hee hath re-entred, he shall hold the same land as tenant by the curtesie, tamen quære, &c. But the law is contrary, if the feoffment had been made by the Husband being within age, &c. mutatis mutandis, &c.

475 &c.

475 And if the husband and wife are ſeiſed of lands in fee as in the right of the wife, and this land is recovered againſt them by falſe ſwearing, and after execution ſued thereof, they have iſſue, and the wife dieth, now the husband ſhall have attaint: and when he hath re-continued the land, and avoided the recovery by attaint, he ſhall hold the ſame land as tenant by the Curteſie; the ſame Law is, of a recovery had againſt the husband and wife by erroneous proceſſe, mutatis mutandis, &c.

O CHAP.

CHAP. VII.

Testaments.

476 NOw we are to speak of Testaments. And it is to know, that all manner of Testaments are, either Testaments written, or Testaments nuncupative. And a testament nuncupative is, when as the Testator maketh his Will by words, before witnesses. But more properly it is said, a Testament nuncupative, when the Testator lieth languishing for feare of sudden death, dareth not to stay the writing of his Testament: And therefore, he prayeth his Curate, and others his neighbours to beare witnesse of his last will, and declareth by word what his last Will is. And such Will is as strong as a Testament or will in writing, and sealed with the Seale of the Testator, if not, that it be in special Cases, &c.

477 And notwithstanding, that a Testament in writing be not sealed with the Seal of the Testator, yet it is good: But Quære, if it be good to make free-hold or inheritance to passe.

478 If

478 If a man make a teſtament, or will, and afterwards he maketh another will by word, and the latter will be proved before the Ordinary, and by him put in writing, and ſealed with his ſeal, ſuch later will ſhall avoid the former will, if not, that it be in ſpecial caſes. And ſo alwayes the latter will and teſtament ſhall avoid the former will and teſtament.

479 And if a man of unſound memory make two wills, that is to ſay, one Teſtament in the ſixth yeare of our Lord the King that now is, and another Teſtament in the eighth year of the ſame King, and after the teſtator ſick on his death-bed & being dumb, and a man in the preſence of his neighbours delivereth both the teſtaments unto the Teſtator, and he taketh them in his hand; And one of the neighbours willeth him that he deliver back unto them the Teſtament, which he willeth ſhall ſtand, and be his laſt will, and he delivereth back unto them the teſtament with the former date, and keepeth the other teſtament by him; now the teſtament which is delivered ſhall ſtand, notwithſtanding that it hath the former date, and was written before the other teſtament, &c. 41 Aſſ. p. 36. M. 44 E. 3. 33.

480 And notwithſtanding that the later will ſhall make void the former will: yet if a man be ſeiſed of land in fee, and thereof doth enfeoff a ſtranger, and declare his will upon ſ livery of ſeiſin made unto the ſtranger, that the feoffee ſhal be ſeiſed unto the uſe of the feoffor for term of his life, the remainder unto I. S. in fee. Now he cannot alter this will T. 19 H. 8. 11.

by a later will in prejudice of him in the remainder, because that the use is in him in the remainder presently, so as he may sell the same. But if in the same case the remainder of the use had by me unto the right heirs of the Feoffor, then the Feoffor might alter this use by a later will. And if the Feoffor had declared his will upon the livery of seisin, that the Feoffee shall be seised unto the use of I. S. for life, the remainder unto the use of the Feoffor for life, or in tail, the remainder unto the use of a stranger in fee, in that case the Feoffor cannot alter the will by his later will.

H. 13 H. 6. to subpœna 23.

481 If a man seised of land in fee thereof, doth enfeoff a stranger unto the intent to performe his will, and afterwards the Feoffor maketh his will, and deviseth the same land unto a stranger in fee. In this case the Feoffor may alter this will by a later will, because that in this case, the Devisee shall not have the the land but by force of the will, and that cannot take effect but after the death of the Devisor. The same law is of land, tenement, Rent Common, &c. devisable by custom used in some places, &c. And also the same Law is of other Chattels reals and personals devised: Mutatis mutandis. &c.

T. 7 H. 4. 8. M. 18 E. 2. feoffments 110.

482 And it is to know, that Executors shall not have an action as Executors before the testament be proved, and therefore if the date of the probate of the testament be ancienter then the date of the making thereof, the writ shall abate, &c.

483 And if the Executors nor any of them will prove the will, and a devise of a Chattel real or personal is by the will, it seemeth that the

the devi ſee hath no remedy to come to the thing devi ſed, tamen quære, if he ſhall have remedy againſt the Adminiſtrator, or Adminiſtrators if there be any; and if there be no Adminiſtrator, Quære, if he ſhall have remedy againſt the Ordinary, &c. But this remedy againſt the Ordinary ſeemeth to be but little; for if he ſhall have any remedy, it ought to be by ſuit, in the ſpiritual Court; more ſhall be ſaid of his matter after, &c.

484 And foraſmuch as it is neceſſary to have the Teſtament proved, ſomething ſhall be ſaid concerning that, viz. By what perſons the Teſtament ought to be proved, and before what perſons it ought to be proved, &c. And it is to know, that always the Teſtament ought to be proved by the Executors, or one of them at the leaſt.

485 And if there be three Executors, and two of them will not prove the will, nor meddle with the goods of the deceaſed, and the other Executor proveth the will notwithſtanding this refuſall made by the other two who were made Executors; and notwithſtanding that the will were proved by the third Executor onely, yet the other two Executors and either of them may intermeddle with the goods of the Teſtator, and adminiſter them at what time ſoever they will; becauſe that when the will is proved, they cannot be put out of the will, and the ſame will giveth them title for to adminiſter the goods of the Teſtator, as well as it giveth title unto him who proveth the will, in ſo much as that notwithſtanding that they never adminiſter, and he who proveth the will will bring an action a-

Executor

Executor of the same will, It behoveth him to bring the action in all their three names: But they shall not be charged as executors before they administer,

486 And it is to know, that Testaments ought to be proved before the Ordinary, if not, that it be in special places, where Lords have the probate of the testaments of their tenants, before their Stewards, or before themselves in their temporal Courts. And the reason why spiritual men have the proving of testaments is, because it is to be intended; that the spiritual men have better consciences then lay-men, and that they have more knowledge what thing is more for the profit, and benefit of the soule of the testator, then lay-men have: And that they will look more then Lay-men, that the debts of the deceased be paid and satisfied out of his goods, and that they will see his will performed so far as his goods will extend, &c.

487 But if the goods of the deceased will not extend to satisfie his Debts, it shall be well done if the officers of the Ordinary take nothing for the preysing of the goods, nor for the probate of the will, nor for registring thereof, nor for any other thing concerning the will: For if they take their Fees, by such meanes, the debts of the deceased may not be satisfied and paid.

488 And notwithstanding, that a man doth devise a Chattel real or personal by his will, yet the executors are bound in Law to pay the debts of the deceased, before they pay or deliver any Legacies. And therefore the Common Law is, that the Devisees of Chattels reals

reals or perſonal cannot enter upon the Legacies, nor take them without the aſſignment or delivery of the Executors, or by their aſſent. Or without the aſſignment, or delivery, or aſſent of one of them; and the reaſon is, becauſe the ſoul of the Teſtator ſhall not be in danger for the not payment of his debts, &c.

489 And it is to know, That Wills proved before the Biſhop himſelfe of the Dioceſſe, which the party dieth is good, if he have not goods & chatteels of the value of 40 ſhillings in any other Dioceſs; for if he have goods and chattels of the value of forty ſhillings in two ſeveral Dioceſſes, then it ought to be proved before the Reverend Father in God, Thomas Lord Cardinal Legat à latere, Archbiſhop of, &c. Primate and Chancellor of England, or his Officer, or before the reverend Father in God, the Archbiſhop of, &c. or his officers, or before them both, or their Officers.

490 A Teſtament proved before the Commiſſary of the Biſhop is ſufficient, &c. And a teſtament proved before the Sequeſtrators of the Arch-deacon of ſuch a place, and his ſeal put thereunto is ſufficient: For all teſtaments cannot be proved before the Ordinary himſelf, and properly the probate of the will doth belong unto him to whom the ſequeſtration doth belong. 1 H. 6. 1. 11 H. 4. 64. 7 E. 4. 14. 3 E. 3. Teſt. 5.

491 A teſtament proved before any Officer of the Ordinary deputed to the ſame is ſufficient: But alwayes when the Kings Court writeth unto any Officer ſpiritual, they ought to write unto him who is immediate officer unto the Court, which is the Biſhop himſelfe.

T. 37 H. 6. 28. 492 And sometimes the party shall be driven to shew, how the Arch-Deacon, or such other Officer hath power to prove the Will, or to commit administration: And therefore if in an Action of Debt brought against Administrators, the Plaintiffe declare how that the Bishop of Winchester committed administration unto them, &c. And the Defendant plead that the Testator died intestate at D. &c. and how that the Officiall of the Arch-Deacon of the same place did commit Administration unto them, without that, that the Bishop did commit the Administration unto them. The Defendants ought to shew, how the Arch-Deacon hath power to commit Administration, as by prescripteon, or by composition, or otherwise.

493 And it is to know, That a Testament proved is of so great force, that a man shall not have a direct traverse thereunto, nor unto the letters of Administration: But the Defendant may say against the Testament that the Testator made not the Plaintiff his Executor, &c. And some have said, that because the Writ ought to agree with the Testament, that the Testament is traversable; but that is false, for a Scire Facias to do execution ought to agree with the words of a fine in the manner, &c. Yet the fine is not traversable directly, &c. And the reason why the Testament is not traversable, is, because that then it shall bee tryed by the Certificate of the Ordinary, and hee will not certifie contrary to that which is shewed unto the Court under his Seale, or under

18 E. 2. Test. 6.

A testament proved not traversable

T. 18. 6. 2. Test. 6.

der the Seale of the Officer deputed for the ſame.

494 If a Teſtament beare date in Cane in Normandy, and be proved in England, it is ſufficient for the Executor to bring an action thereupon. But if an Obligation be dated in Cane in Normandy, the Obligee, nor his Executor ſhall not habe an action upon the ſame, &c.

M. 2 E. 2 Oblig. 15.

CHAP.

CHAP. VIII.

Deviſes.

495 NOw is to ſpeak of Deviſes. And firſt, is to ſhew what perſons may make Deviſes, and then unto what perſon a Deviſe may be made, then what things may be deviſed, and when no eſtate is limited in the deviſe of land, tenement, or rent, &c. What eſtate the Deviſee ſhall have, and when the deviſe ſhall be determined as unto him in the remainder, by the act of him who hath, or ſhall have the particular eſtate of the thing deviſed by the deviſe upon which particular eſtate the remainder is dependant; and then how the Deviſees ſhall come unto the things deviſed, &c.

496 And it is to know, That all perſons who may make teſtaments or wils, may make a deviſe of the ſame thing, of which they may make a teſtament and will, and not of other things, if not that it be in ſpecial caſes: And therefore if a Parſon of a Church be ſeiſed of lands in fee in his own right, and doth enfeoff a ſtranger of the ſame Land unto the uſe of him and his heirs. Now he, viz. the Feoffor

ſor may make a teſtament, and deviſe of this uſe and of his proper goods and Chattels: But he cannot make a teſtament nor deviſe of a uſe of his Glebe lands or tenements, or other things which he hath in the right of his Church, &c.

497 An Abbot or Prior of a Monaſtery cannot make a deviſe of lands nor of tenements deviſable, nor of an uſe of lands, tenements, &c. Nor of goods, nor Chattels, &c. But if an Abbot or Prior be created a Biſhop, and by the ſame buls of his creation, our holy Father the Pope hath diſpenſed with him, and hath granted unto him to hold his Abbey, and alſo the Biſhoprick: If ſuch Biſhop and Abbot purchaſe the lands deviſables in fee, he may make a will and deviſe of them, and if he purchaſeth lands not deviſables in fee, & thereof enfeoffeth a ſtranger to his uſe; he may make a will and deviſe of this uſe, &c. And of all his proper goods and chattels, he may make a Will and Deviſe: But he cannot make a deviſe of Lands or Tenements deviſables which he holdeth in the right of his Biſhoprick, or in the right of his Abbey. Nor of a uſe of Lands or Tenements which he holdeth in the righe of his Biſhoprick, or in the right of the Abbey, nor of Goods and Chattels which he hath in their rights, &c. Caula pater, &c. M. 19 h. C. 44.

498 And a Deane, or Maſter of an Hoſpital, or Guardian of a houſe, &c. cannot make a teſtament, nor a deviſe of Lands or tenements, &c. Or of an uſe of lands or tenements, &c. Or of goods and Chattels which they have, in the right of their Church or Houſe.

The

The ſame Law is of Major and Communalty, Mutatis mutandis, &c.

499 And therefore if a Deane and Chapter, or, &c. recover debt, or annuity, or other thing in a Court of Record, as in the right of their Church or houſe, &c. and dieth before Execution ſued, &c. his ſucceſſor may have a ſcire facias to execute the ſame judgement, &c. But if they have lands and tenements deviſables, &c. or an uſe of lands or tenements, or goods or chattels in their own right, they may make a Will, and a deviſe of them.

500 A deviſe by one joynt-tenant of land deviſable, which he holdeth in fee, at his death joyntly with a ſtranger is not good; the ſame Law is of a uſe in joynture, &c. But if ſuch deviſor doth ſurvive all his companions, then ſuch deviſe is good, as is ſhewed by M. Littleton in his third book in the chapter of joynt-tenants, and in Natura Brevium, with the additions upon the writ of Ex gravi querela, &c. where are put many good caſes concerning Deviſes.

26 E. 3. 71. M. 2 E. 2. Deviſe 14.

501 If a woman maketh a will of the goods of her husband, and dieth, and her Executor proveth the Will, and after the probate of the will the husband doth deliver the goods deviſed unto the Executors, now he hath made it a good will, notwithſtanding that he was not privy unto the making thereof; & yet a conceivable argument may be made why it ſhould not be good, by this delivery of the goods made by the husband, &c. For in ſo much as the Wife had not leave of her husband to make a will, it is void, &c. But it cannot be ſaid void, for that it is proved. And alſo it ſhall be

be intended, that by the delivery of the goods by the husband unto the Executors of the wife according to the will, that he did at the first assent unto the making of the will, and such leave or assent is sufficient by word, &c.

502 And a married woman may make a will of goods which she hath as Executrix unto another man without the leave of her Husband, as it appeareth in § Chapter of grants. And a Monk who is Executor by the leave of his Soveraign, may make a will of the goods which he hath as Executor, &c. and divers other persons may make wills, as more fully appeareth in the Chapter of Grants; Mutatis, mutandis, &c. 12 H.7.14. per sineux.

503 And an Infant of the age of four years may make a will, and it shall be good for all his goods and chattels, because of such things the Executors are accomptable before the spiritual Judge, or the Ordinary, so as it cannot be intended but that they shall be expended for the benefit, and profit of the soule of the Infant.

504 But of free-hold or inheritance devisable or of an use of free-hold or inheritance, a devise made by an Infant is not good, because they are at the Common Law, for the executors are not to entermeddle therewith, and the ordinary cannot demand accompt of them, &c. But if there be a Custome, that all lands and tenements within such a precinct, &c. are devisable by all manner of persons, which are of the age of fifteen years, or above such age. A devise made of lands or tenements by one of such age is good. But if a man seised of such lands and tenements in fee, and thereof doth M. 37 H.6. 5.

enfeoff

infeoff a ſtranger unto his uſe, and his heirs, and dieth, and his heire being of the age of 15 yeares, maketh his will, and deviſeth the ſame land given in uſe to him unto a ſtranger in fee, and dieth, this deviſe is not good, &c.

505 Now it is to ſhew, to what perſons the deviſe may be made. And as to that, know, that a deviſe may be made unto all ſuch perſons unto whom a grant may be made, mutatis mutandis, if not, that it be in ſpecial caſes. And it is to know, that the deviſe ought to be good, and to take effect at the time of the death of the Deviſor, if not in ſpecial caſes, otherwiſe it ſhall not be good. As put caſe, a man ſeiſed of land deviſable, deviſeth the ſame lands unto the Prieſts of a Colledge, or of a Chauntry, and there is not any ſuch Colledg or Chauntry at the time of the death of the deviſor, and afterwards ſuch a Colledge or
9 H. 6. 23. Chauntry is made, yet the deviſe is void, becauſe the deviſes are purchaſes, and when a man taketh lands or tenements by purchaſe, he ought to be of ability to take the ſame when it alleth unto him by the purchaſe, or otherwiſe he ſhall not have the ſame, &c. as it appeareth in the Chapter of grants, &c.

506 If a man ſeiſed of land deviſable in fee deviſeth the ſame land unto his wife for the terme of her life, the remainder unto I. his ſonne, and unto the heirs males of his bodie begotten, and for default of ſuch iſſue, the remainder unto the nere heir male of the Donor, and unto his heirs males of his bodie begotten, and dieth, and his wife entereth by force of the deviſe: And afterwards I. his

ſon

ſon dieth without iſſue male of his body, living the wife, being tenant for terme of her life, and afterwards ſhe dieth, and one P. D. and A. his wife enter into the ſame land as in the right of A. his wife, as couſin and heire to the Donor, and have iſſue a ſonne, and the husband and wife by deed enrolled enfeoffe a ſtranger of the ſame land in fee, and the ſaid ſonne as next heire male entereth into the Land, his entry is not lawful, Cauſa patet, &c.

507 And it is to know, that a man may deviſe by his will, that his executor, or the executors of his executor, may ſell his lands, &c. and the ſame is good, yet the executors of the executor were not known at the time of the death of the Deviſor, but ſhall be in eſſe, and known at the time of the death of the executors of the Diviſor; See divers caſes concerning this matter in the Chapter of Grants, Mutatis mutandis, &c.

508 And if a man ſeiſed of Land deviſable, in fee hath two ſons and one daughter, which daughter hath iſſue two daughters, & deviſeth his land unto a ſtranger for life, & remainder unto his two ſons for life, the remainder unto the next of the blood of his child, the deviſor dieth, and the mother of the two daughters dieth, the ſtranger dieth, the eldeſt ſon dieth without iſſue, & ſecond ſon doth thereof enfeoffe a ſtranger with warranty, upon whom the 2 daughters do enter, and the Feoffee putteth them out, and they bring an Aſſiſe, the Aſſiſe will well lie. And it is to know, that if a man be ſeiſed of land deviſable in fee, he may deviſe the ſame land unto his executors for years, for life, in taile, or in fee, &c. 21 H. 2. Diviſe 27.

509 If

509 If a man ſeiſed of land deviſable in fee deviſe the ſame unto I. S. for life, the remainder Eccleſiæ ſi Andreæ in Holborn, &c. and the Deviſor dieth, it ſeemeth the remainder is good by way of deviſe, but otherwiſe would it be by way of grant, as it appeareth in the Chapter of grants.

510 But the communalty of a company which is not incorporated by the Kings charter to purchaſe, &c. cannot take by a deviſe. And therefore if a man ſeiſed of land deviſable in fee, deviſeth the ſame land unto A. for life to finde a Chaplain to ſing for his ſoul in the Church of, &c. the remainder unto the brother-hood of the Whittawrs in London, to finde a Chaplain, &c. Now if the, viz. the Whittawrs be not incorporated by the Kings Charter, and enabled for to purchaſe, the remainder is void. And know, That the chief and ſupream Officers of the fraternity, corporation, or guild, are taken in Law for the beſt men of the fraternity, corporation, or guild, &c. See divers caſes concerning this matter in the Chapter of Grants, Mutatis mutandis, &c.

40 E. 3. Aſſ. p. 2.

511 Now is to ſhew what things may be deviſed. And as to that, know, that all manner of Chattels reals and perſonals, may be deviſed: and free-hold or inheritance of lands & tenements, &c. deviſeable, or in uſe, may be deviſed, if not that it be in ſpecial caſes. And as to Chattels reals and perſonals, it is to know, that all ſuch Chattels reals and perſonals which the Executors ſhall have may be deviſed: if not, that it be in ſpecial caſes, &c.

512 And therefore, if a man be ſeiſed of land in fee, or in fee-tail, and ſome the ſame

Land,

Land, and deviſeth the Corne growing upon the Land at the time of his death unto a ſtranger, it is a good deviſe, notwithſtanding that the Land is not deviſable nor in uſe, &c. But if the Deviſor had deviſed the trees growing upon the land at the time of his death the deviſe as unto the trees is void, becauſe that the heir of the Deviſor ſhall have them, and not the executors, &c.

513 If a man ſeiſed of land in fee as in the right of his wife, leaſeth the ſame land for years unto a ſtranger, and the Leſſee ſoweth the land, and afterwards the wife dieth, the corne not being ripe. In this caſe the Leſſee may deviſe the corne growing upon the land, and yet his eſtate was certain, and is determined: but a thing uncertain was the cauſe of the determination of his eſtate, &c. See divers caſes concerning this matter in the firſt book of Mr. Littleton, in the Chapter of Tenant at will, &c. Mutatis mutandis, &c.

514 If tenant by the Curteſie of lands or tenements, Tenant for life leaſeth the ſame unto a ſtranger for years, and the Leſſor dieth within the terme of years: In this caſe, if the corne were growing upon the lands, and not ripe at the time of the death of the Leſſor, the Leſſee may well deviſe the ſame, &c. 10 E. 3. 29

515 But if after the ſowing, the Leſſee for years doth infeoff a ſtranger, and before the, &c. and the Leſſor doth enter for a forfeiture, he ſhall have the corn, &c. The ſame law is, of a leaſe for years upon condition, Mutatis mutandis, &c. And if land be recovered againſt Leſſee for yeares into writ of waſte, he cannot deviſe the corne, notwithſtanding it be H. 40 E. 3. 5. T. 37 H. 6. 35.

growing

growing upon his land at the time of his death, &c. And ſo, if land be recovered againſt his Leſſor by a more ancient title, &c. But otherwiſe it is, if a common recovery be had againſt his Leſſor in a writ of Entre en le poſt, or in any other writ by a falſe and feyned title, &c.

M. 7 H. 7. 11.

516 If a man ſeiſed of land in fee doth thereof enfeoff a ſtranger in mortgage upon payment and not payment on the part of the Leſſor, at a certain day, and the Feoffee ſoweth the land, and the Feoffor payeth the money at the day appointed, and entereth, now the Feoffee cannot deviſe the Corn growing upon the land as it is ſaid, tamen quære.

P. 44 E. 3. 14.

517 If a Manor be put in execution upon a Statute merchant, and he who hath the Manor in execution hath a Ward, after the execution, by reaſon of the Manor, which ward is as much worth as the debt doth amount unto: he whoſe lands are put in execution ſhall have a Scire facias againſt the Conuſee, &c. and ſhall have his Manor back again: But if the Conuſee hath ſowed the land, he may well deviſe the Corne growing upon the land.

7 Aſſ. p. 10.

518 And if a man be ſeiſed of land in the right of his wife, &c. and ſoweth the ſame land, and deviſeth the corn growing upon the land, &c. and dieth before the corn be ſevered, the Deviſee ſhall have the corn, and not the wife, but otherwiſe is it of graſſe, not ſevered at the time of the deviſors death, &c.

27 H. 8. 5. 7 H. 7. 17. 28 H. 6. 1. 15 E. 4. 30.

519 If a Diſſeiſor be of land, and he ſoweth the land: Now if the diſſeiſee entreth, or recovereth by a writ of Aſſiſe before the Corn be

be ſeuered, he may deviſe the corn, and ſo may not the diſtreſſor: But otherwiſe it ſhould be, if the corn be ſebered before his entry, or before his recovery, notwithſtanding that it remain upon the land, &c. For then the diſtreſſor may deviſe the ſame, &c. But the Law is otherwiſe in the ſame caſe of trées ſebered, which were growing upon the lands, &c.

520 And it is ſaid, if tenant in tail of land leaſeth the ſame land for life, and the Leſſee doth ſowe the ſame land, and the tenant in tail dieth, and the iſſue in tail doth recover in a Formedon en le diſcendor, before the corn is ſebered, the iſſue in taile may well deviſe the corn, tamen quære.

521 If a man ſeiſed of land in fée hath iſſue a daughter, and dieth, his wife being great with child of a ſon, and the daughter entreth, and ſoweth the land, and after the ſowing and before the ſeverance, the ſon is borne, and one of his next friends entreth for him; yet the daughter may deviſe the corn growing upon the land, Cauſa patet. But if after the ſowing, and before the ſonne was born, the mother hath recovered her dower againſt the daughter, and the land ſowed be aſſigned unto her by the Sheriff for her dower in allowance of other lands. How the mother may deviſe the corne growing upon the land, and the daughter cannot, tamen quære. 9 H. 6. 6. ent. tong. 4.

522 And know, That the Statute of Merton, cap. 2. which giveth, Quod omnes viduæ cæterò poſſint ligare blada, &c. as unto this point is but in affirmance of the common law; for if tenant en dower or, &c. ſoweth the land which ſhe holdeth in dower, and maketh her ex-

Executors, and dieth, the corne not ſevered, the Executors ſhall have the corne, notwithſtanding that they are not ſevered by the common Law. And to be ſhort, Tenant in dower may deviſe the Corne growing upon the land which ſhe holdeth in dower at the time of her death, by the Common Law. And ſo was the Law taken in Anno 4 H. 7. Deviſe 6. which was 16 years before the making of the Statute of Merton, &c.

523 If two tenants in common be of lands in fee, and one of them taketh a wife, and dieth, and his wife is endowed, &c. And ſhe and
H. 12 H. 7. 29. the other Tenant in common ſow the land, &c. and afterwards ſhe maketh her executors, and dieth, the corne not being ſevered, her executors ſhall have the corne in common with him who held in common with the Tenant in dower.

524 If the Guardian in Knights ſervice aſſigne unto the mother of the ward more land then ſhe ought to have for her dower, and ſhe ſoweth the ſame land, and afterwards maketh her executors, and dieth before the heir be of full age, and afterwards the heir at his full age doth enter upon the Corn not ſevered, he may put out the executors of the Tenant in dower out of the poſſeſſion of the Corn growing upon the land, whereof ſhe ought not for to have dower. In the ſame manner ſhall it be, if the Guardian in knights ſervice endoweth the mother of the ward, &c. of more then ſhe ought to have, &c. And the heir when he cometh at his full age, may ſue forth a writ of Admeaſurement of dower, &c.

525 And it is to know, That the wardſhip

of body and lands, and a leaſe for years of lands and tenements, and a grant for years of a rent, and horſes, kine, ſheep, &c. and gold and ſilver, in plate, or money, and rings, or in any ſuch manner, and beds, and pots, and pans, and platters, and all manner of chattels reals and perſonals whatſoever they be deviſables, the executors ſhall have them, if they be not deviſed, &c.

526 But where a man hath a joynt intereſt in ſuch chattels, &c. at the time of his death, a deviſe made thereof is nothing worth, Cauſa patet. And where ſuch chattels are annexed unto the free-hold or inheritance, ſo as they cannot be ſevered from the ſame by him who hath property in them; then a deviſe made by him who hath property in them is not good.

527 And if a man doth enfeoff a ſtranger of land upon payment, and not payment on the part of the Feoffee, viz. that if the Feoffee pay unto the Feoffor 20 pound at the feaſt of Eaſter, then next following, that then he ſhall keep the land unto him and his heirs, & if he do not pay, &c. that it ſhall be lawful for the Feoffor to re-enter. Now if the Feoffor make his will, and deviſeth the money when it ſhall be paid unto I. S. and dieth before the day of payment, it is a good deviſe conditionally, viz. if the Feoffee payeth the money unto his executors. And ſo ſhall it be of an Annuity payable at the feaſt of Eaſter, upon one Obligation, or upon a contract upon ſuch condition as before is mentioned, Mutatis mutandis. And yet if he had deviſed the Obligation, or the counter-part of the indenture unto a ſtranger, the deviſee could not bring an Action in his owne name upon

12 E. 3. condition 8.

the obligation, but he may give or sell the obligation unto the Obligor, or unto a stranger, &c. And the Devisee cannot enter into the land by force of the condition, notwithstanding that the condition be broken, and that he hath the indenture, Causa patet. But it seemeth he may give, or sell away the Indenture, &c.

528 Now is to speak of Devises of Freehold and Inheritance. And it is to know, that when freehold or inheritance doth passe from one person unto another by force of devise, it behoveth that it be devisable, or otherwise in use: For if it be not devisable, nor in use, the devise is void. And it is to know, that before the Statute of West. 3. which is called and known by the name of Quia emptores terrarum, &c. There was no use of lands or of houses, if not, that it were expressed upon the delivery of the estate, &c.

529 And therefore if before the Statute of Quia emptores terrarum, tenant in fee-simple of land had enfeoffed a stranger without any consideration, and without expressing of any use, yet the Feoffee should be seised unto his own use. For notwithstanding that no consideration were expressed, &c. yet the law made a consideration; for in the same case the Feoffee shall hold of the Feoffor by the like services, as the Feoffor held ever, the which is a sufficient consideration to alter the use; but notwithstanding, if in the same case it had been expressed in the feoffment, to have and to hold the land unto the Feoffee, and unto his heirs unto the use of the Feoffor and his heirs, then the Feoffee shall be seised accordingly.

The

The ſame law is, if any other uſe be expreſſed in the feoffment, &c.

530 But if a man ſeiſed of a rent-charge in fee before the ſtatute of Quia emptores terrarum, granteth the ſame rent unto a ſtranger in fee without any conſideration, and without expreſſing of any uſe, the Grantee ſhall be ſeiſed unto the uſe of the Grantor and his heirs, becauſe that in this caſe the law doth not make any conſideration.

531 But it is ſaid, that if a man be ſeiſed of lands in fee, and grant a rent iſſuing out of the ſame land unto a ſtranger without any conſideration, &c. The Grantee ſhall be ſeiſed of this rent unto his own uſe; for the law cannot intend ſuch a grant to be made to the uſe of the Grantor. And it is ſaid by ſome, that if a man hath common in groſſe which is certain in fee, and he granteth the ſame common unto a ſtranger in fee, without any conſideration, &c. That the Grantee ſhall be ſeiſed of the Common to his own uſe, becauſe that the profit is of a Common are to be taken by the mouthes of cattel, ſo as the profit is conſumed, &c. But as unto that, it may be ſaid, that it is as great profit for the Grantee to have it for his cattell, as to have the value of the uſage of the Common in rent, &c. Tamen quære. M. 14 H. 8. 5.

532 If there be Lord and Tenant by homage and fealty, and the Lord granteth his Seignory unto a ſtranger, unto the uſe of the Grantor and his heirs, and the tenant attorns, the homage and fealty are not valuable, and yet the Grantee is ſeiſed thereof unto the uſe of the Grantor, to ſuch intent as the Grantor M. 14 H. 8. 5.

M. 14 H. 8. 5. may grant the ſeignorie unto a ſtranger, or ſell it, or deviſe it by his Will, &c.

533 And if Tenant in fee-ſimple do at this day infeoff a ſtranger thereof without any conſideration, &c. The Feoffee is ſeiſed unto the uſe of the Feoffor and his heirs, for the Law in this caſe doth not make any conſideration, for the Feoffee ſhall not hold of the Feoffor, &c. but he ſhall hold of him of whom his Feoffor held by force of the ſtatute of Quia emptores terrarum. More ſhall be ſaid of this matter in the Chapter of Reſervations, &c.

534 And if a man at this day, or after the Stat. of Weſt. 2. cap. 1. De donis conditionalibus, and before the ſtatute de quia emptores terrarum, was, or is ſeiſed of lands in fee, and giveth the ſame in tail unto a ſtranger, without any conſideration, &c. the Donee is ſeiſed unto his own uſe, for the Law maketh a conſideration, by the way of tenure, patet. Now.

535 And if a man ſeiſed of Land, leaſeth the ſame without any conſideration for life, &c. the Leſſee is ſeiſed unto his own uſe; and yet if nothing be reſerved, he ſhall do onely fealty unto his Leſſor and his heirs, or unto his Grantee of the reverſion, &c.

536 And if a leaſe for years be made without any conſideration, the Leſſee is ſeiſed unto his own uſe. And yet according unto the opinion of divers men, Leſſee for years ſhall not do fealty, &c. But the reaſon is, becauſe that the reverſion of the ſame thing remaineth in the Leſſor, ſo as the Law cannot intend that the intent of the Leſſor was, that the Leſſee ſhould be ſeiſed for his life, if he hath not made expreſſe mention upon the leaſe. And

alſo he may deviſe his land for years, notwithſtanding that it be not deviſable, nor in uſe, &c.

537 And if a man at this day be ſeiſed of a ſeignorie, rent, or common in groſſe which is certain in fee, and grants the ſame unto a ſtranger in tail, for life or for years without any conſideration, they are ſeiſed thereof unto their own uſe, Caula patet. But in all the caſes of feoffments, grants, or leaſes, if a uſe be expreſſed in the feoffment, grant, or leaſe, &c. They, viz. the Feoffees, Donées, Grantées, and Leſſées, ſhall be ſeiſed unto the uſe expreſſed, if it be not againſt law. As put caſe it is expreſſed unto the uſe of a Monk profeſſed, who is not ſoveraign of the houſe, &c. as is aforeſaid. If a deviſe be made of free-hold or inheritance, it behoveth that the free-hold or inheritance be deviſable or in uſe, otherwiſe the deviſe is void.

538 And therefore, if a man be ſeiſed of land, rent, or common, or, &c. in fee not deviſable, and deviſeth the ſame unto a ſtranger in fee, in tail, or for life, and the Deviſor dieth, the deviſe is void, &c. But if a man be ſeiſed in fee of lands, tenements, rents, common, or, &c. deviſables: or if a man be ſeiſed in fee of lands, tenemẽts, rent, or common, or, &c. not deviſable, & thereof doth enfeoff, or grant the ſame unto a ſtranger in fee, unto the uſe of the feoffor, or grantor and his heirs, &c. If he, viz. the feoffor or grantor deviſeth the ſame lands, tenements, rent, common, or, &c. in fee, in tail, for life, or for the terme of another mans life, it is a good deviſe, &c.

539 If husband and wife be joynt purchaſers

ſers unto them, and unto the heirs of the huſband, of lands, tenements, or, &c. deviſables,
27 Aſſ.p.6. and the husband deviſeth the fee-ſimple after the death of him and his wife unto a ſtranger by his will, &c. it is a good deviſe, &c.

540 If lands or, &c. be deviſed unto the huſband and wife in tail, the remainder unto the right heirs of the husband, and the Deviſor dieth, and the husband and wife enter, &c. and the husband deviſeth the fee-ſimple unto his wife, and dieth, it is a good deviſe, &c. Know that the reverſion of lands or tenements deviſable ſhall paſſe by the name tuitionum ſeu tenementorum, &c.
M. 34 H.6. Deviſe 4. See when one thing ſhall paſſe by the name of another, and when one thing ſhall paſſe as parcel of another, and divers other good matters concerning deviſes in the Chapter of grants, Mutatis mutandis, &c.

38 Aſſ.p.3. 541 And if a man ſeiſed of land in fee, willeth by his teſtament, that his executors ſhall ſell the ſame land, and diſtribute the profits coming thereof for his ſoule, and the Deviſor dieth; now the inheritance ſhall deſcend unto the heir, and ſhall continue in him, until they viz. the Executors ſell, &c. and then the executors may enter, &c. and thereof enfeoff the Vendee according to the ſale.

542 But if lands deviſable are deviſed unto the Executors for to ſell, &c. In this caſe the Executors after the death of the Deviſor may enter into the lands, &c. becauſe they were deviſed unto them.

543 But if a man tender unto them money for the lands, but not ſo much as the lands are worth, and they refuſe it, to the end that they may ſell the lands dearer, and for two yeares take

take the profits of the same lands unto their own use, the heir may enter and put out the Executors, causa patet.

544 But if a man be seised of lands not devisable, and doth thereof enfeoff a stranger unto his use, viz. unto the use of a Feoffor and his heirs, and afterwards the Feoffor deviseth the same land unto his Executors for to sell, and dieth, in this case, the Executors cannot enter into the lands, and continue possession thereof, because they have only a use of the land by this devise, but they may enter, and thereof enfeoff the Tenant, &c. by force of the Statute of 1 R. 3. cap. 1. And so may every devise of land in use do, &c. And also a gift, grant, release, lease, and confirmation, made by cestuy que use, &c. are good and effectual by force of the said Statute. See the Stat. &c. But a Devise made by cestuy que use in tail is void; so is a devise made by tenant in tail of lands devisable, &c.

545 If a man maketh his will, and maketh two Executors, and willeth that his Executors shall sell his land, &c. and dieth, and one of them will not intermeddle, and the other Executor taketh the administration upon him and payeth the debts, &c. The sale made by him alone is good, and if both the Executors take upon them the administration, and one of them will not sell, then the sale by the other Executor alone is good; but if one of the Executors selleth unto one man, and the other Executor selleth unto another, it is said by some, that the sale of him which is most advantageous for the Testator shall be good, but others say, that the first sale shall be good, and the

P. 46 E. 3. Devise 8.

39 Ass. P. Ep. 116.

the other void, whether it be more beneficial for the Teſtator or not. Ideo quære.

546 But if the Will be, that the executors ſhall joyntly ſell, and one of them ſelleth unto one man, and the other ſelleth unto another man, and afterwards both the executors joyn in a ſale unto a third perſon; in this caſe the laſt ſale is good, and the other ſales are not good.

547 And if a man willeth, that his lands ſhall be ſold for the payment of his debts, and doth not expreſſe by whom the ſale ſhall be, it ſhall be ſold by his executors, becauſe the land ſhall be ſold for the payment of his debts, and
15 H.7.12. the payment of the Teſtators debts doth belong unto the executors, &c. But if a man willeth that his land ſhall be ſold, and doth not ſay by whom, nor for what, it ſeemeth to be void, tamen quære, the opinion of other men.

19 H. 8.9. 548 If a man willeth, that A. and B. his executors ſhall ſell his land, &c. and they refuſe before the Ordinary; yet they may ſell becauſe they are certainly named; ſo as it ap-
15 H.7.12. peareth, that the will of the Teſtator is, that they ſhall ſell, whether they refuſe or not. But otherwiſe it ſhall be (as it ſeemeth) if he willeth, that his executors ſhall ſell, without expreſſing their names, and they refuſe before the Ordinary, they cannot ſell, &c.

19 H.6.15. 549 If a man maketh I. S. his executor, and willeth that a Monk ſhall ſell his land, and ſhall diſtribute the profit thereof for his ſoul, the Monk is executor to his purpoſe. If a man willeth that his Executors ſhall ſell his lands, and diſtribute the profits coming thereof

thereof for his ſoule, and they prove the Will, and make their executors, and die before they ſell, the executors ſhall ſell the ſame: but if they make no executors, their adminiſtrators ſhall not ſell, for want of privity, for the ſale is a thing of truſt, &c. 15 H. 7. 12.

550 If a man willeth that his executors ſhall ſell his land, if they all die, but one, before any ſale made by them, he who ſurviveth may ſell. If a man willeth that I. his heire ſhall ſell, &c. and I. dieth before the ſale, his heir ſhall not ſell the land.

551 If Ceſtuy queuſe, willeth that his feoffées ſhall ſell his land, they ought to ſell joyntly by reaſon of their joynt poſſeſſion, &c. But if all the feoffées but one die before ſale made by them, then he who ſurviveth may ſell, becauſe that the poſſeſſion of the whole is in him, &c.

552 If a man willeth that I. S. his now executor ſhall ſell his land, the executors of I. S. ſhall not ſell the ſame, becauſe it appeareth by the words of the Will, that no other ſhall ſell: and alwayes he ſhall ſell in whom confidence and truſt is repoſed. And therefore if a man willeth that I. S. Major of London ſhall ſell, &c. And I. S. is Major of London at the time, and before the ſale another man is choſen Major, in this caſe I. S. ſhall ſell, and not the new Major. And ſo is it in the like caſes, &c.

553 If a man willeth that his executors and his feoffées ſhall ſell his land; and the executors ſell without the feoffées unto one man, and the feoffées without the executors ſell unto another man, and afterwards the executors

cutors and the Feoffees ſell unto a third man, In this caſe the laſt ſale is good, and the other two ſales are not good, &c.

554 And it is to know, that when the land is become, ſo as it cannot be ſold, that the heir ſhall have the ſame. As put caſe. A man ſeiſed of Land deviſable, deviſeth by his will, that his Land ſhall be ſold by his Executors, and dieth; and all the Executors die inteſtate before any ſale made by them, or any of them, in ſuch caſe the heir ſhall keep the land: And if Ceſtuy que uſe of Land in fée willeth that I. S. now his Executor ſhall ſell, &c. And I. S. dieth before any ſale made by him; then the uſe is in the heir to him, and his heires for ever, &c.

555 Now is to ſhew, when no eſtate is limited in the teſtament or will unto the Deviſée, what eſtate the Deviſée ſhall have. And as to that, know, that when no eſtate is limited, That the Deviſée ſhall have an eſtate according to the intent of the Deviſor, which intent ſhall be expounded by the words in the will; if not, that it be in ſpecial caſes.

556 And therefore, if Ceſtuy que uſe of land or, &c. in fée, or a man ſeiſed of land or, &c. deviſable in fee, deviſeth the ſame land by his will unto I. S. Now I. S. ſhall have the ſame for his life, becauſe that the intent of the Teſtator cannot be otherwiſe taken by the words of the will.

M. 22 E. 3. Deviſ. 26. 557 If lands be deviſed unto I. S. to habe and to hold unto him in perpetuum. It ſeemeth that by theſe words he ſhall have an eſtate but for his life; for in perpetuum cannot extend further but unto the Deviſée, and there are not

more

more perſons named, &c. And the life of a man in this manner is ſaid as unto him in Perpetuum, &c. Tamen quære. If the words of the deviſor were, To hold, &c. unto the deviſée in fée, without saying any more, the Deviſée hath an eſtate of inheritance in fée, &c. If lands be deviſed unto I. S. To hold unto him and his Aſſignes, by theſe words, the deviſée ſhall have fée. The ſame Law is, if it be deviſed to him and his aſſignes in perpetuum, &c.

558 If a man hath a leaſe for years, and deviſeth by his will, that I. his ſon ſhall have this leaſe, viz. the reſidue of the years unto him and his heirs, and the Deviſor dieth, and I. hath the Land leſſed which was deviſed unto him by the aſſignment, aſſent, or livery of the Executors (as he ought to have) and maketh his Executors, and dieth within the terme. It is ſaid, that the heir of I. ſhall have the reſidue of the years, and not the Executors, becauſe that the poſſeſſion thereof continued in the Deviſée not altered, and the will of the Deviſor is, that his heir ſhall have it; and alſo becauſe the word (Heir) in this caſe ſhall be taken as a name of purchaſe: ſo that if the term continueth at the time of the death of I. who is the Deviſee, that then his heire ſhall have the reſidue of the Terme by way of remainder by force of the Deviſe, &c. M. 34 H. 6. 8.

559 But if a man leaſeth land unto me for years, to have and to hold unto me and my heirs for years, and I make my Executors and die within the Term, my Executors ſhall have the reſidue of the years, and not my heir. Cauſa patet. And in the principal caſe, if I. who was the Deviſee, had granted the whole terme

terme unto a ſtranger, and afterwards die within the terme. It is ſaid by ſome, that the heir ſhall not have any remedy. And by the like reaſon, they ſay, that the executors of I. ſhall have the reſidue of the terme, and not the heire: But notwithſtanding that the Law be ſo, yet that doth not proue that the heire of I. ſhall not have the reſidue of the Terme: for if Land deviſable be deviſed unto me and my heirs, &c. And I enter and ſell the land unto a ſtranger, my heire hath no remedy notwithſtanding the Deviſe; and yet if I do not ſell nor alien the ſame, but continue the poſſeſſion thereof, according unto the deviſe, at the time of my death, my heir ſhall have it according to the deviſe.

560 And if a man hath a terme for years in land or, &c. in the right of his wife, and he granteth the whole term unto a ſtranger, and dieth within the terme, his wife hath no re-
7 H.6.1. medie to have the reſidue of the terme: But if the husband hath not granted the terme unto a ſtranger, but continueth in poſſeſſion at the time of his death, and dieth within the terme his wife ſhall have the reſidue of the yeares &c.

561 If a man ſeiſed in fee of white acre and black acre deviſable, and deviſeth white acre unto I. S. To have and to hold to him and the heirs of his body begotten, and deviſeth black acre unto I. K. to have and to hold in the ſame manner and forme as I. S. holdeth white acre, by theſe words I. K. ſhall have an eſtate taile in black acre: and the reaſon is, becauſe that the will, and the intent of the giver ſhall be obſerved: See divers caſes concerning this matter

matter in the Chapters of grants faits, Mutatis mutandis, &c.

562 And as it is ſaid, the will of the Deviſor ſhall alwayes be obſerved, if it be not impoſſible, or much againſt the law, and in other ſpecial Cales, in ſo much, as if a man ſeiſed of land deviſable, leaſeth the ſame land unto a ſtranger for life, and afterwards by his will deviſeth the reverſion of the ſame land unto the ſtranger in fee, and dieth, it is a good deviſe without attornment; the ſame Law is, of a rent deviſable, &c. 34 H. 6. 7. per Littleton.

563 If a man ſeiſed of land deviſable in fee, deviſeth the ſame unto I. S. Clark, upon condition that he ſhall be a Chaplain, and ſhall ſing for the ſoule of the Deviſor all his life, and that after his deceaſe the land ſhall remain unto T. S. Major of S. and his ſucceſſors to finde a Chaplain perpetually for to ſing for the ſoule of the Deviſor, and the Deviſor dieth, and I. S. being of the age of 24 years entreth and holdeth the land for 4 years, & is not a Chaplain, the heir of the deviſor may enter for the condition broken, & yet the remainder ſhall not be defeated, but ſhall take effect after the death of the Deviſee for life, Tamen quære. 20 Aſſ. p. 17. Aſſiſe 28.

564 But if there be Leſſee for life, the remainder unto a ſtranger in fee by deed indented, upon condition that the Leſſee ſhall pay yearly 5 s. at the feaſt of Eaſter unto the Leſſor and his heirs, and after the condition is broken, for which the Leſſor doth enter: Now by his entry the remainder is defeated, becauſe it was all by one deed, and the condition did depend upon the whole eſtate &c. And the leſſor cannot have a leſſer eſtate when he entreth for

the condition broken, then he had at the time when he left the possession, &c. No more then a man seised of land in fee by matter in deed or in writing, can lease the same land for life, reserving unto himselfe a lesser estate in reversion, then a fee, &c. And yet in the case of a devise, the remainder shall not be avoided by the entry of the heir for the condition broken, because the will of the Devisor shall be observed inasmuch as it may be, &c.

565 And if a man seised of land in fee, leaseth the same land by deed indented for life, the remainder unto a stranger in fee, reserving unto the Lessor & his heirs 10 s. rent, and if the rent be behind, &c. that the Lessor and his heirs shall enter for the condition broken, and shall retain the land during the life of the Lesse, and no longer; If the Lessor entereth for the condition broken in the life of the Lesse, and afterwards the Lesse dieth, he in the remainder may enter upon the Lessor, and have his remainder, &c. And know, that in the principal case, the remainder cannot take effect presently after the condition broken, because the devise was once effectual in the Devisee for life.

566 But if Land be devised for life, the remainder unto a Monk for his life, the remainder unto a stranger in fee; in this case, the last remainder shall take effect presently after the death of the first Devisee for life, notwithstanding that the Monk be alive, &c. and the reason is, because the remainder never took effect in the Monk, and also there is a particular estate, upon which the remainder doth depend, and therefore in this case the remain-

der

der in fée ſhall be good notwithſtanding that it were by way of grant, &c.

567 If a man ſeiſed of Land deviſable in fée, doth deviſe the ſame unto a Monk for life; the remainder unto a ſtranger in fee, and the Deviſor dieth, the Monk being alive. In this Caſe, the remainder ſhall take effect preſently, becauſe the Monk tooke nothing by the deviſe; and notwithſtanding that there be not any particular eſtate upon which the remainder doth depend, yet the remainder is good, for that the will of the Deviſor ſhall be obſerved, inaſmuch as it may be, &c.

568 But if a leaſe of Land be made unto a Monk for life, the remainder unto a ſtranger in fée, this remainder is void, &c. If land be deviſed unto I. S. for life, the remainder unto T. K. in fee, and I. S. dieth before the Deviſor dieth, and then the Deviſor dieth, it is a good remainder to T. K. and ſhall preſently take effect, &c. 9 H. 4. 24. 3 H. 6. 47.

569 If a man ſeiſed of land deviſable in fée, doth deviſe the ſame land unto I. his Son in tail, the remainder unto a ſtranger in fee, and I. entreth into the land, and ſaith that he will occupie the land as heir, and not by force of the Deviſe; yet notwithſtanding ſuch diſagreement he ſhall be ſeiſed by force of the Deviſe: For his father might have deviſed the Land unto a ſtranger in fée, and the ſon ſhall without remedy, and therefore if he will have the land, he ſhall take it as his father gave it unto him, for otherwiſe it ſhould be at his will and liberty, whether the will of his father ſhould be obſerved or not, which the Law will not ſuffer. But he may refuſe the poſſeſ-

ſion and not meddle with the ſame, and ſo may diſagree. For a man ſhall not be compelled to take by a deviſe whether he will or no. And notwithſtanding that he had ſo diſagreed to the deviſe, the remainder ſhall not be avoided. And it ſeemeth to ſome, that then he in the remainder may enter, and preſently execute the remainder, Tamen quære, &c.

570 Now is to know, how the Deviſees ſhall come by the things deviſed: And as to ſ, know, that for all chattels reals and perſonals deviſed, if the Executors will not deliver, aſſigne, or pay them unto the Deviſees, that they have no other remedy but to ſue for them in the Spiritual Court, for the law doth more reſpect the ſoul of the Deviſor, then the Deviſees, and therefore the Law will not ſuffer the deviſees to take their legacies out of the poſſeſſion of the executors in deſpight of them, becauſe the legacies ſhall not be aſſigned, delivered, or paid, until all the debts of the Teſtator be ſatisfied and paid, in ſo much as if the Executors aſſigne, deliver, or pay the legacies, before the debts of the teſtator are paid, and there be not ſufficient goods of the teſtator to pay his debts, the Executors ſhall be charged of their own goods, &c.

20 E. 4. 9.
2 H. 6. 15

571 And it is to know, That if the Executors will, that they may uſe ſuch deceit, that the legacies ſhall never be aſſigned, delivered, or paid, notwithſtanding that they have goods in their hands of the Teſtators of the value of one thouſand pounds over and above the debts and legacies of the Deviſor, &c. For they may cauſe ſtrangers to bring actions of debts againſt them as Executors upon falſe obligations,

obligations, &c. And ſo they may always plead when the Deviſees demand or ſue them for their legacies in the ſpiritual Court, that the debts of the Teſtator are not paid, and that there are more ſuits againſt them, then the goods of the Teſtator are ſufficient to ſatisfie or pay: and by ſuch covin they may defraud the deviſees of their legacies: And the Executors may, or one of them may by covin confeſſe the Plaintiffs action, and execution may be ſued againſt them by covin, &c. Or otherwiſe they deny the obligations, by pleading that they were not the deeds of the Deviſor, &c. And they may give ſuch evidence, that it ſhall be found againſt them, &c. And by ſuch deceit, and divers other covenous means, the deviſees may be defrauded of their legacies, for ſuch deceits may be ſo ſecretly done, that they ſhall not be intended covenous. And therefore it ſhall be well for ſuch Deviſors to deliver ſuch things, or cauſe them to be given or delivered unto them in their life-times, and not to give them by way of Legacy, and the ſame is a good and ſure way to execute their intents. And divers other good, and ſure means there are, &c.

572 But if a man maketh two Executors, and by his Will giveth 20 l. to one of them; he may take his legacy without the aſſent of his Co-executor, notwithſtanding that he hath not adminiſtred before, &c. If the Teſtator hath land for the terme of xx years, and he deviſeth the ſame land unto one of his Executors, he may enter, and occupie the land according to the deviſe without the aſſent of the other Executors, &c. 11 H. 4. 8.

573 If the Teſtator hath Lands for the terme of twenty yeares, and deviſeth the Land for parcell of the yeares unto one of his Executors, the remainder unto a ſtranger, if the Executor who is the Deviſee doth enter, and occupie ſolly by force of the Deviſe, after the yeares determined, The ſtranger who is the Deviſee in remainder may enter, and occupie the Land during the reſidue of the yeares, if the other goods of the Teſtator were ſufficient to ſatisfie, and pay all the Teſtators debts. Quære, if the goods of the Teſtator be not ſufficient to ſatisfie, and pay his debts: But it ſeemeth he may enter notwithſtanding that, becauſe the Deviſe was once executed, &c.

574 But if the Teſtator had deviſed parcel of the yeares unto all the Executors, &c. The ſtranger who is remainder ſhall not enter, nor occupie without the aſſignment of the Executors, becauſe it cannot appear whether they occupie the Land as Executors, or as Deviſees. And therefore it ſhall be taken, that they occupy as Executors, and not as Deviſees, for that is more for the benefit, and profit of the ſoule of the Teſtator. Tamen quære, how they ſhall be adjudged in the Land, in ſuch caſe, &c.

575 If a man hath Land for term of yeares, and maketh his will, & deviſeth ẏ ſame land unto Alice the wife of I. S. and maketh the ſame I. S. his Executor and dieth, and I. S. entreth into the Land, and occupieth the ſame, but it doth not appear whether he occupied the ſame as Executor, or in the right of his wife, and I. S. maketh his will, but ſaith nothing of the

the terme in his will, and maketh T. K. his Executor, and dieth within the terme, it ſeemeth that the wife who was Deviſee cannot enter in the Land deviſed unto her without the aſſignment or aſſent of the Executor of her husband. Tamen quære.

576 And to come unto Free-hold, or Inheritance deviſed, know, That the Ordinary cannot intermeddle therewith, for ſuch eſtates doe not appertain unto the Executors, if a deviſe of them had not bin made. And it is to know, that ſometimes a man cannot enter into a free-hold, or inheritance deviſed unto him, without aſſignment or livery thereof made unto him.

577 And therefore it was uſed within the City of London in the time of King Edward 3. If a deviſe had been made of tenements in London for life, in tail, or in fee, &c. the will as to the ſame ought to have been proved in the Guild-hall of the City, and when it was proved, ſeiſin was given thereof. And if in ſuch caſe the Deviſee had entered of his own head without livery or aſſignment, the heire might have had an Aſſiſe of Mordancestor againſt him. And ye ſame law was for tenements in Oxford deviſed in fee, in tail, or for life Mutatis mutandis: which Wills ſo proved, and proclamations thereupon had, binde all manner of perſons as ſtrongly as a fine proclamed; which if they die not, make their claim to the ſame tenements within one yeare after the proclamations made: And ſo know, that of free-hold and inheritance deviſable, it ſhall be alwayes according to the cuſtome, if it be reaſonable, &c. P. 49 E. 3. Deviſe 8.

578 But of free-hold and inheritance deviſable, whereof ſuch a cuſtom to prove the will is not uſed, nor any other cuſtome, but onely that they are deviſable: In ſuch caſes the deviſees after the death of the Deviſor may enter without any aſſignment, if the deviſe be of land or a houſe, whereof their eſtate ought by the deviſe to be preſently executed.

579 And when free-hold or inheritance of lands, tenements, &c which are at the Com-
15 H. 7. 12. mon Law, or in uſe, are deviſed by ceſtuy que uſe, by his will; the deviſe is good notwithſtanding that the will be never proved, becauſe the Ordinary hath not to do with free-hold or inheritance; And in ſuch caſes the deviſees thereof may make a feoffment, gift, grant, leaſe, releaſe, or confirmation, as the caſe ſhall require, by force of the Statute of 1 R. 3 cap. 1. But it is to know that nothing ſhall paſſe by the deviſe of Ceſtuy que uſe, but that which may lawfully paſſe from him.

580 And therefore if a man ſeiſed of Land, doth thereof enfeoff I. S. unto the uſe of I. K. and Alice his wife, and unto the heirs of I. K. and I K. deviſeth the ſame land by his will unto a ſtranger in fee, and dieth, living the wife, That in this caſe the wife ſhall have the whole land during her life, notwithſtanding the deviſe of her husband, Cauſa patet, &c.

CHAP.

CHAP. IX.

Surrenders.

581 NOw is to ſpeak of Surrenders: And firſt, what things may not be ſurrendzed by deed and what may. And as to ỹ know, that where a juſt grant, or other thing cannot take effect without a deed, ſuch eſtate or thing cannot be ſurrendzed without deed, if not that it be in ſpecial caſes.

582 And therefore if a man ſeiſed of Rent-ſervice, Rent-charge, Rent-ſeck, common for years, or, &c in fee, &c. and granteth the ſame for life or for years, by deed (as he ought) the Grantee cannot ſurrender the ſame without deed.

583 But if Leſſee for life be of land, or of a houſe, and the Grantor granteth the reverſion unto a ſtranger for life, and the Leſſee attorn, the grant is void, if it be not by deed. And yet if the Leſſee dieth and the grantee entreth into the land, he may ſurrender the ſame without deed & off of the land, if the ſurrender be made within the County where the land is: But if the ſurrender be made in another County, it ought to be by deed, &c. And Leſſee for life of

19 H. 6. ſurr. 4. 14 H. 7. 3. 12 E. 3. ſurr. 21.

of land, or of a house upon condition by deed indented, may surrender his estate without deed. The same law is of lessee for years, &c.

584 Now is to shew, what estates may be surrendred, and unto what persons they may be surrendred, &c. And it is to know, that particular estates, as for life, or for yeares, may be surrendred unto him who hath the immediate remainder, or reversion unto the particular estate in his own right, if the estate in remainder or in reversion be such an estate wherein the particular estate may be drowned, if not that he who surrendreth have not a joynt estate in the fré-hold, or in the terme for years, with him unto whom the surrender is made; and in other speciall Cases, &c.

H. 13 H. 4. surr. 10.

585 And estates in fée of some things issueing out of Lands, may be determined by the surrender of the deed unto the Tenant of the Land, by which deed it was granted, &c. And it hath bén holden, that an estate in fee of Lands, or Tenements, may be surrendred by the Tenant unto his Lord, who hath cause to have an action of Cessavit of the same Land, quære. But it is cléer, that Tenant in fé-simple at the will of the Lord according to the custome of the Manor may surrender according unto the custome of the Manor, &c.

12 H. 6. surrend. 6.

586 If a man doth enfeoff I. S. and T. K. of certain land, to have and to hold unto them and to the heirs of T. K. and I. S. surrendreth his estate unto T. K. it is a void surrender, notwithstanding that I. S. had but frée-hold, and T. K. had a fée expectant to be executed in possession immediately after the death of I. S. and the

reason is, because that T. K had a joynt
estion in the Free-hold which I. S. and ev-
joynt tenant is seised of the whole, so that
surrender cannot be the cause, that he hath
possession of any part of the land; and also
estate cannot drown in the estate of T. K.
either of them hath an estate of Free-hold
possession in and through the whole land.

17 If I. S. T. K. and C. D. be joynt Fe-
s of lands, to have and to hold unto them
unto the heirs of I. K. And afterwards I.
eth release all his right unto D. C. and af-
wards D. C. doth surrender unto T. K, &c.
s a good surrender for the third part of the
, &c.

18 If a lease for life be made of land, the
ainder unto a stranger for life, the re-
nder unto another stranger in tail, and the
e doth surrender unto him in the remain-
in tail, or unto his Lessor who hath the
reversion, living him in the remainder
life. This surrender is void, to take effect
surrender, because that he unto whom the
nder is made, hath not the immediate
te in remainder unto him that maketh the
nder. But if he who made the surrender
an estate for years, and in the surren-
, there be words which amount unto a
e of his estate, then the surrender shall 14 H.7.2.2
effect by way of grant of his estate, &c.

19 If a lease for life be of land, the re-
nder of the same land unto a stranger for
, and the Lessee for life doth surrender his
e unto him in the remainder for years, it
not take effect as a surrender, because that
ate for life cannot drown in an estate for
s.

590 If Donée of a rent in tail, &c. surrendreth his estate unto his Donor who hath the
11 H. 7. 11. reversion of the same land in fee, it is a good surrender; but if Lessée for life be of land, the remainder unto a stranger for life, and the Lessee doth surrender unto him in the remainder, it is a good surrender; for he unto whom the surrender is made, hath an estate for his own life in remainder, and an estate for a mans own life is a higher estate of freehold unto him, then the estate for the life of another man is: in the same manner as it is of land, shall it be of all rents, commons, services, &c. Mutatis mutandis, &c.

591 And it is to know, that if I. S. be seised of the Manor of Dale in fee, and granteth a rent issuing out of the same Manor, or a common, or any other thing in fee, if the Grantee doth surrender the deed by which the said rent, &c. was granted unto him, either unto his Grantor, or unto any other person being Tenant of the same Manor, notwithstanding that the tenant of the Manor be with divers others joyntly seised of the same Manor, and notwithstanding that he hath not but an estate for years in the same Manor in remainder; by the surrender of this deed unto him the rent or, &c. is determined and extinct.

592 But if the Grantee had recited by another deed, how a rent-charge was granted unto him, and reciting in the same deed the effect of the grant, grant the same rent unto the Lessee for life of the Manor, to have and to hold unto him and his heirs, and surrendreth unto him the deed by which the grant was made unto him, and at the

me delivereth his deed of grant unto the
leſſee, the ſame ſhall not enure nor take ef-
ect to determine and extinguiſh the rent; but
all take effect by way of grant, to take effect
fter the death of the Grantee. For at the
me of the grant made unto him, he had
eſſion and ſeiſin for his life of the Manor
t of which the rent was iſſuing, ſo that the
rant could not take effect in him preſently,
notwithſtanding that, the grant ſhall
ke effect in his heire, if ſome other Act
not done to hinder the ſame. As if the
eſſee grant the ſame rent unto a ſtranger, or
herwiſe purchaſeth the reverſion of the Ma-
or out of which the rent is iſſuing, ſo as
fee of the Manor is executed in him, &c.
or if the Leſſee in the ſame caſe enfeoffeth a
ranger of the Manor, and the Leſſor en-
eth for a forfeiture, the rent is determined
d extinguiſhed, becauſe that the leſſee had the
of the rent at the time of the feoffment, to
ant or to forfeit, &c. And by the feoffment
departed with the land in fee diſcharged of
e rent; ſo that by this feoffment the rent is
rmined and extinguiſhed, &c.

593 But if the Leſſee of the Manor after
e purchaſe of the rent commit waſte in the
ole Manor, or in parcel thereof, for
ich the Leſſor doth recover in an Action of
aſte; yet the Leſſee ſhall not have this rent
ring his life: But Quære, if the Leſſee
fter the purchaſe of the rent, and before any
aſte done, grant the rent unto a ſtranger,
d afterwards doth commit waſte, if the
rantee ſhall commit have the rent of the Fe-
or during the life of the leſſee, &c.

594 But

594 But if a man be ſeiſed of a rent-cha
in fee, iſſuing out of a Manor, or other la
and the tenant of the rent, or of the lan
diſſeiſed, and the Grantee of the rent doth
render his deed of grant unto the Diſſeiſe
ſeemeth the ſame is no determination of
rent at this time: And yet the Diſſeiſee
nant unto the Lord, as to above upon him.
if the Diſſeiſee doth re-enter, then it ſeem
the rent is determined and extinguiſhed, i
hath the deed of the grant of the rent in
poſſeſſion by force of the ſurrender of the ſa
deed, &c.

595 If a man ſeiſed of land in fee, gran
eth a rent-charge out of the ſame land in fe
and the Grantor dieth without heir, and
fore any entry made into the land by the Lo
or any other perſon, the Grantee doth ſurren
er his deed of grant unto the Lord. Quæ
if the rent be immediately determined and e
tinguiſhed: becauſe that the Lord had bu
poſſeſſion in law in the land out of which
rent was iſſuing at the time of the ſurrend
made; yet it ſeemeth the rent is immediate
extinguiſhed, &c.

596 But if a man who is tenant in taile
ſuch a rent or common, &c. ſurrendreth b
deed of grant unto his Grantor, or unto an
ther who is tenant of the land out of which
rent is iſſuing, it ſhall not extinguiſh the re
or, &c. Cauſa patet.

597 But if the Grantee of a rent-charge
fee granteth the ſame rent in fee unto him w
is ſeiſed of the land out of which the rent is
ſuing in fee, the ſame ſhall enure and ta
effect to determine and extinguiſh the rent,

it appeareth in the Chapter of Grants, &c.

598 If tenant in tail doth discontinue the tail in fee and dieth; and the issue in tail bringeth a Formedon against the Discontinuee, and pendant the suit he writeth the deed of entail unto the tenant in the County, and the Tenant seeing the deed, doth surrender unto him, &c. the same is no good surrender. 20 H. 7. 21. 34 Ass. p. 11.

599 And notwithstanding that some particular estates may be surrendred in manner and form as is aforesaid; yet it behoveth that he that doth surrender be seised or possessed of such estate at the time of the surrender, otherwise such surrender shall not be good, if not, that it be in special cases.

600 And therefore if lesse for life, or for years of land, be ousted of the land by a stranger, and after the ouster, and before his entry, he doth surrender unto his lessor, it is no good surrendr, because he hath but a right at the time of the surrender, &c. And therefore if a woman hath title to have dower by the common law, and she doth surrender unto him against whom she ought to have dower, it is a void surrender.

601 If a lease for ten years be made to begin at the feast of S. Michael the Arch Angel next after the lease, and before the feast of S. Michael, the lessee doth surrender unto his lessor, it is no good surrender, yet he may grant the same before the said feast of St. Michael. But the surrender is not good, because that the lessee is not in seisin and possession legaliter of the thing leased before the feast of S. Michael came, &c.

602 And a release made by the lessor unto the

the leſſee before the Terme doth begin is void; and notwithſtanding that the leſſee before the Terme doth begin doth enter into the thing leaſed unto him, and do an act which amounteth unto waſte, the leſſor ſhall not have an action of waſte for the ſame. And if the leſſee after the terme begun, and before he doth enter by force of the leaſe, doth ſurrender unto his leſſor, it ſeemeth to be a void ſurrender, if any other perſon be in poſſeſſion of the thing leaſed at the time of the ſurrender, if not that he hath parcel of the term of the leſſee, by force of the grant of the leſſee, &c.

603 If a man ſeiſed of land doth leaſe the ſame for ten years to begin preſently, and the leſſor waiveth the poſſeſſion, and before any entry made into the ſame land by any perſon, the leſſee doth ſurrender his eſtate unto his leſſor, it is a good ſurrender, and yet the leſſee ſhall not have an action of Treſpaſs, for a treſpaſs done upon the land before his entry: and alſo a releaſe made unto him by his leſſor is void before his entry, &c.

604 And if there be leſſee for ten years of land, and he granteth parcel of the years unto a ſtranger, and the Grantee doth enter, &c. and the leſſee doth ſurrender unto his leſſor, it is a good ſurrender: but if the Grantee of the leſſee had ſurrendred unto the leſſor of his grantor before the ſurrender made by the leſſee, the ſame ſhall not take effect as a ſurrender.
14 H. 7. 3. Cauſa patet.

605 If there be leſſee for years of land, the remainder of the ſame land unto a ſtranger for life, the remainder unto another in fee, and during the years, he in the remainder for life

life doth ſurrender unto him in fee, it is a good ſurrender: but if in the ſame caſe the leſſee for years had been put out of the land by one that had no right, and he who put him out dyeth ſeiſed of the ſame land and his heir doth enter, upon whom the Leſſee for years doth enter, and then he in the remainder for life doth ſurrender unto him in the remainder in fee, the ſame is a void ſurrender, becauſe he had but a right to the remainder, and alſo he unto whom the ſurrender was made, had but a right of remainder in fee, at the time of the ſurrender, &c.

606 If there be Grantee of a Rent charge in fee, and a ſtranger is pernor of the rent, and the Grantee doth ſurrender his deed by which the grant of the rent was made unto the tenant of the land, the ſame ſhall determine and extinguiſh the rent, notwithſtanding that the pernancy be made with the aſſent of the tenant of the land, &c. And it is to know, that there are two manner of ſurrenders, viz. A ſurrender in deed, and a ſurrender in law. And firſt, is to ſpeak of a ſurrender in deed, and what words make ſuch a ſurrender.

607 And as unto that, know that when the words prove a ſufficient aſſent, and will of him who is the particular tenant, that he in the remainder or the reverſion ſhall have the thing which he hath or holdeth. They are words ſufficient to make a ſurrender, if he unto whom the ſurrender is made doth agree thereunto.

608 And therefore, if Leſſee for life or for years of land ſay unto his Leſſor, that his will is, that his Leſſor ſhall enter into the land 10 E. 3. 24.

which he holdeth for life, or for years, and shall have the same, and by force thereof the lessor doth enter into the same, it is a good surrender, and so shall it be, if he say unto his lessor, or unto him in the remainder, or reversion, that he will that he have the land, & the lessor doth enter by force thereof, or agreeth thereunto, it is a good surrender: But if the lessor, or, &c. doth not enter by force thereof, nor agreeth thereunto, the surrender is not good; for he cannot surrender unto him against his will: But if he unto whom the surrender is made do once agree to the same, he cannot afterwards disagree thereunto. And in the time of King Edward 1 the lessor did enter into the land leased for life, with the assent of the lessee: and because it was not in the presence of men of good credit, it was holden to be a void surrender. But the law is otherwise at this day, &c.

6 E. 3. 7.

Temps E. 1. Assise 403.

609 And if the lessee cometh unto him in the remainder, or in the reversion, and saith unto him, that he will occupie the land no longer, and he in the remainder by force thereof doth enter, it is a good surrender. And if the lessee doth say unto his lessor, I do surrender unto you the land which I hold of your lease, Or if he saith, I hold such land, or house, &c. and sheweth certain the land or house, &c. of your lease, and I do surrender the same land or house, &c. unto you, and the lessor doth agree thereunto, the same is a good surrender.

610 And if I. S. holdeth one acre of land for years of the lease of C. D. and holdeth another acre of land for life of the lease of the same C. D. And I. S. doth say unto C. D. I surrender unto

unto you all the land which I hold of your leaſe, it is a good ſurrender for both acres: So ſhall it be, if he ſay, I ſurrender unto you the land I hold of your leaſe, for in ſo much as he doth not expreſſe what land, it ſhall be taken for all the land which he holdeth of his leaſe, becauſe the ſurrender is his Act and Deed; and the ſame ſhall be taken ſtrongeſt againſt him, &c. But if he had ſurrendred the land which he held of his leaſe for yeares, he ſhall not have by this ſurrender the land which he held for his life, ſo ſhall it be è converſo, &c.

611 If I hold one acre of land for life of the leaſe of the father of I. S. and I hold ano other acre for life or years of the leaſe of I. S & I ſurrender unto I. S the land which I hold of his leaſe, by this ſurrender he ſhall not have the land which I hold of the leaſe of his Father, notwithſtanding that the reverſion of the ſame acre be in him by deſcent from his Father, &c.

612 If a woman who is Tenant in dower taketh a Husband, and the Husband doth ſurrender the Land which he holdeth in the right of his wife, for the life of the wife, it is a good ſurrender during the coverture. And if the Husband dieth before the wife: Or if they be divorced, Cauſa præ-contractus, the wife may enter, and defeat the ſurrender, notwithſtanding that he to whom the ſurrender was made died ſeiſed of the land in his demeaſn as of fee, and his heir be in by deſcent. The ſame Law is, if the ſurrender be made by the husband and wife, &c.

613 But if a ſingle woman who is leſſée for years of land, or a houſe, &c. taketh a Huſband, and the Husband doth ſurrender the Land, and dieth before the years are determined, yet the Surrender ſhall ſtand. If a man be ſeiſed of land for the life of his wife, in the right of his wife, and he and his wife will ſurrender the ſame land by fine, the wife ſhall be examined, becauſe ſhe giveth by fine; and no particular tenant cannot ſurrender by fine, if he be not named in the writ whereupon the fine ſhall be levied.

15 E. 3. Dureſs 13. 614 A ſurrender made by an Infant by word of the land is not good, inſomuch as if he ſurrendereth an eſtate of Free-hold, and by force hereof he to whom the Surrender is made doth enter, the Infant ſhall have an Aſſiſe: The ſame Law is of a ſurrender made by dureſſe of impriſonment; a ſurrender made by a man who is not Compos mentis, is good for ever. 5 E. 4. 4. Tamen quære, &c.

615 If two men ſeiſed of land in fee, leaſe the ſame Land unto a ſtranger for life, or for years, and he doth ſurrender all his eſtate in the Land unto one of them, the ſame ſhall enure unto them both. See the reaſon thereof in the Chapter of Grants, &c. But if the leſſée for life hath ſurrendred the lands unto both the Leſſors, or unto one of them for 20 years, the ſame ſhall not take effect by way of ſurrender, for then there remaineth an intereſt in the Leſſée; which is as a mean remainder between the eſtate which is ſurrendred and their reverſion, &c. In the ſame manner as it is of ſurrender of land, ſo ſhall it be of ſurrenders of Bards, or of any other things, Mutatis mutandis, &c.

616 If

616 If a man ſeiſed of land, leaſeth the ſame land for life, and granteth the remainder unto a ſtranger for life, and the Leſſee for life granteth his eſtate unto him in the remainder for life, the Law ſaith that this ſhall enure by way of ſurrender: So ſhall it be, if the leſſee for life doth enfeoff him in the remainder for life. The ſame law is, if a man ſeiſed of land in fee leaſeth the ſame for life, and the Leſſee doth thereof enfeoff his Leſſor, &c. 14 H 8. 15.

617 If leſſee for ten years of land, doth take a new leaſe of the ſame land of his leſſor for 20 years, it is a ſurrender of the firſt leaſe, &c. But if leſſee for life or years of a houſe, and land, do remove his goods and chattels out of the houſe and land, by reaſon of the greatneſſe of the rent, or becauſe he is behind in his rent, or for any other cauſe, and the Leſſor doth enter into the houſe and land, this is no ſurrender: For it doth not appear that the will of the Leſſee is, that his leſſor ſhall have the houſe and land, but that he waiveth the poſſeſſion for his own advantage. 1 Aſſ p. 20 T. 8 E. 3. 46.

618 If leſſee for life of land granteth his eſtate unto him in the reverſion, and unto two other men, it is a ſurrender for no part. And yet if there be Lord, and tenant by fealty and xii d. And the Lord granteth his Seignory unto the Tenant, and a ſtranger in fee the moitie of the rent ſhall be extinguiſhed in the tenancy, for it ſhould be inconvenient, that the Tenant ſhould have rent iſſuing out of his own land, unto his own uſe; and the other moitie of the rent with the fealty, the Grantee ſhall have the ſame, &c. M. 7 H. 6. 3. P. 34 H. 6. 41.

619 But when leſſee for life of land grant-

eth his eſtate unto him in the reverſion, and unto two others, he alone hath not intereſt, and eſtate in the Free-hold, but he hath a joynt eſtate with others in the Free-hold, ſo that if they ſurvive, they ſhall have the whole Free-hold by the ſurvivorſhip: And alſo he in the reverſion had nothing in the Free-hold before the grant. And it is not impertinent but that he in the reverſion may take livery of ſeiſin and eſtate in the ſame Free-hold for the advantage of another perſon. And if leſſee for
50 E. 3. 3. life be, the remainder for life, and the leſſee for life doth commit waſte, this waſte is diſpunichable at this time for the advantage of him in the remainder for life, &c. See other reaſons concerning this matter in the Chapter of Grants, &c.

620 If leſſee for life granteth his eſtate unto him in the reverſion, the remainder unto a
7 H. 6. 4. ſtranger in fee, it ſeemeth this remainder is void, becauſe that when he in the reverſion alone is to take the whole, and all the eſtate which was out of him, and no more, and he hath the reverſion in his own right, It ſhall be hard that he ſhall take by livery of ſeiſin: And ſo it ſeemeth that the grant ſhall enure by way of Surrender, and that the remainder is void, Tamen quære, becauſe that the livery of ſeiſin is made upon the whole deed, and by the ſame deed the remainder is granted unto the ſtranger; and ſo it is unto the profit and benefit of the ſtranger, &c. But if leſſee for life of land leaſeth the ſame land unto him in ỹ re-
M. 39 E. 3. verſion for life, the remainder unto a ſtranger
29. in fee, the ſame is no ſurrender, Cauſa patet.
41 E. 3. 29. 621 If there be leſſee for life of land, the re-
41 Aſſ. p. 2. mainder

mainder in tail unto a ſtranger, the remainder ober in tail unto another man, the remainder unto the right heirs of the leſſee, & the leſſee doth thereof enfeoff him in the firſt remainder in tail, and his wife in fee, and the husband dieth without iſſue, living the leſſee, and he in the ſecond remainder doth enter and put out the wife, ſhe ſhal have an aſſiſe becauſe ſhe ſhall have the land during the life of the leſſee who was his feoffor. Tamen quære. And if he in the ſecond remainder in tail dieth without iſſue, living the wife, then he ſhall retain the land unto him and his heirs for ever, &c.

622 If a ſingle woman ſeiſed of land in fee leaſeth the ſame unto a ſtranger for life, and taketh a husband, and the leſſee doth grant his eſtate unto the husband, this is no ſurrender: And yet the husband is ſeiſed of the reverſion in fee, which is immediate unto the eſtate of the leſſee, viz. in the right of his wife, and not in his own right, &c.

623 If leſſee for life be of land, the reverſion unto two coperceners, and one of them taketh a husband, and the leſſee granteth his eſtate unto her and her husband, this is no ſurrender: But if tenant in dower be of lands, and ſhe granteth her eſtate unto him in the reverſion reſerving rent, and the grantee taketh a wife, and dieth, his wife ſhall have dower; which proveth that the grant doth enure by way of ſurrender; And yet the reſervation ſhall be good if it be by deed indented, to take effect by way of grant &c. But the Tenant in dower ſhall not diſtrain for the rent becauſe ſhe had no reverſion, and no clauſe of diſtreſs is in the deed; And ſhee ſhall not have an

2 H. 7. 14. P. 45 E. 3. 13.

action of debt because she hath an estate of free-hold in the Rent; but she shall have the same as a Rent-seek: more shall be said of this in the Chapter of Reservations.

624 And it is to know, that a surrender of a free-hold made by deed indented upon condition is good: And if the surrender be of an estate for years in land, then the surrender may be upon condition without deed; And if a surrender be made of the Free hold by deed indented upon condition, that if he to whom the surrender is made, do not goe unto Yorke within one moneth next following the date of the surrender, that then it shall be lawful for him who made the surrender to re-enter into the land, the same is a good surrender upon condition.

1 E. 4. 34.

CHAP.

CHAP. X.

Reſervations.

625 NOw is to ſpeak of Reſervations. And as to that, know, That there are many words by which a man may reſerve unto himſelfe that which was not in him before, and abridge the tenure of that which was in him before, viz. Tenendum, Reſervandum, Reddendum, Solvendum, Faciendum, and other the like. And there are divers words by which a man cannot properly reſerve any thing, but thoſe which were in him before, viz. Exceptis, Reſervatis, præter, ſalvis, and other the like, &c.

626 And therefore if a man be ſeiſed in fée, of one acre of land, hee may let the ſame acre for life, to hold of him by fealty and ten ſhillings rent, and if the fealty or the rent be behinde, he may diſtrain, and yet the ſame was in Eſſe before; See the reaſon thereof in the Book of Mr. Littleton, in the Chapter of Rents, and ſée there many good Caſes concerning Reſervations. And it is to know, that a Reſervation ought to be out of ſuch a thing unto which a man may retort for to take M. 21 E. 3. 49.

take a distresse, as out of land, or a house and not out of a Rent, &c. if not that the Reservation be made by our soveraign Lord the King, of whose title I will not speak.

627 But if there be Lord, Mesne, and Tenant, and the Mesne giveth the menalty in tail, reserving fealty, and rent, this is a good reservation, because the tenancy may come unto the Donee: But the Donor nor his heir shall not distrain for the fealty, nor the rent notwithstanding that they be behinde, before the tenancy be come unto the Donee, and then he shall distrain for all the arrerages from the time of the gift, and the Donee shall not avow the same.

P. 12 E. 4. 11. 628 If there be Lord, and Tenant by fealty, and 12 pence and the Lord releaseth or confirmeth the estate of the tenant, to hold of him by 1 d. the same is good, and yet he held of the Lord by this 1 d. and more before, &c. And if a man seised of land, doth give the same in tail, reserving 12 d. the same is a good reservation, by the word Reservandum.

M. 8 E. 4. 8.

619 If there be Lord, and Tenant by Fealty, and xii d. And the Lord doth release all his right unto the Tenant, or confirmeth the estate of the Tenant, reserving unto him 1 d. it is good, yet it was in one before, &c. And if the husband and wife grant, and render a Manor for terme of life by fine, rendering the first yeare 1 d. and for six years then next following every yeare a Rose at the Feast of Easter, and after the six years every year 10 l. in money, with clause of distresse; This fine shall be received; but a fine with clause of reentry shall not be received, because that then the

F. 44 E. 3. 22.

the estate should be defeisable, which is against the nature of a fine, &c. For finis finem litibus imponit, &c.

630 If a man seised of land, leaseth the same for life, rendring for the first 6 yeares 3 quarters of Wheat; and if he hold over, &c. yeilding 5 l. by the year, this is a good reservation by this word Reddendum, &c.

631 If there be Lord and tenant by knights service and 20 s. rent, and the Lord confirmeth the estate of the Tenant, rendring unto him onely homage, fealty, and escuage when it shall be assessed by Parliament unto 40 s. 40 s. and when lesse, lesse, by this confirmation the 20 s. rent is determined, and yet this word (Reddendum) is more properly the word of the confirmer, then of the confirmee, &c. M. 12 E. 3. Exec. 6.

632 And if a man seised of land, leaseth the same for life, or giveth it in tail, Solvens. sibi & hærend. suis annuatim, 20 d. it is a good Reservation. And if there be Lord and Tenant by fealty and 12 pence, and the Lord doth confirme the estate of the Tenant, Ad solvendum sibi 1 d. the same is good. And if a man seised of land, leaseth the same for life, or giveth the same in taile unto a stranger, Pro homagio suo faciendo, it is a good Reservation, &c.

633 If there be Lord and Tenant by Fealty, and 12 d. and the Lord doth confirm the estate of the tenant ad faciēdum sibi fidelitatem tantum, it is a good confirmation, and by the same the rent shall be determined, &c. And it is to know, that every thing which is reserved by any of the words aforesaid, ought to be within the purport of the same words, otherwise 22 H. 3. gard. 151. 13 R. 2. Avowry 89 P. 49 E. 3. 10.

otherwise the reservation is not good, if not that it be in special cases, &c.

634 If there be Lord, & Tenant by knights service, and the Tenant giveth the Tenancy in tail, Faciendum forinsecum servicium quantum ad eandem terram pertinet. By these words the Donée shall hold of the Donor by Knights service, &c.

635 If there be Lord & Tenant by Knights service, and the Tenant before the Statute of West. 3. called Quia emptores terrarum lex, levyeth a fine of the tenancy upon a grant, and render unto C. D. Reddend. inde ad festum Nativitat. Sancti Johannes Baptistæ annuatim, i. e. Pro omnibus serviciis secularibus & demandis. Et faciendo capitalibus Dominis feodi illius per prædict. The tenant who levieth the fine Hæred. & assign. suis omnia servicia debita, & consueta; In this case the Conusée holdeth of the Conusor by Knights service, notwithstanding that he doth expresse that he shall do the services Capitalibus Dominis; for by these words in this case he shall not hold De capitali. Dom. because there is a tenure before expressed in the fine, viz. by these words, Reddend. inde annuatim ad festum, &c. which words make a tenure of the Conusor, so that if he shall hold De Capitali Dom. then he should hold the land of two several Lords, the which the law will not suffer in this case. But if these words were not in the note of the fine, viz. Reddend. inde ad festum Sancti Johannes Baptistæ annuatim, i. e. pro omnibus serviciis secularibus & demandis. Then by the other words the Conusée ought to hold of the Lord paramount by the like services, as the Conusor held, &c.

M. 2 E. 3. 331

636 Two

636 Two joynt-tenants of land, or houſes, &c. by a ſpecial means may hold by ſeveral ſervices, As put the caſe, there be Lord and two Joynt-tenants of two acres of land by fealty and 12 pence, and one of them at this day doth enfeoff a ſtranger of that which doth belong unto him upon condition. In this caſe the Feoffee ſhall hold of the Lord by fealty and 12 pence: And if the Lord granteth unto a ſtranger the ſervice of the Feoffée, and the Feoffée doth attorn, and afterwards the condition be broken, and the Feoffor entreth: In this caſe the Feoffor and the other joynt-tenants are joynt-tenants as they were before the feoffment made. and yet they hold by ſeveral ſervices, and of ſeveral Lords, but not the ſame land, for one joynt-tenant holdeth one moity of one Lord, the other joynt-tenant holdeth the other, of the whole ſaid moity of the other Lord, &c.

637 If there be Lord and Tenant, and the tenant at this day doth give the tenancy in tail, Tenendum de capitali Dom. this Tenendum is void, becauſe that the Law hath made a tenure betwixt the Donor, and the Donée, &c. And then if the Tenendum ſhould be good, he ſhould hold the ſame land of two Lords which the law will not ſuffer, if not that it be by matter of concluſion, &c.

638 If a man be ſeiſed of a Manor in fée, in which Manor there is a Mill for the grinding of Wheat, and other grain; and before the Statute of Quia emptores terrarum, he doth enfeoff certain tenants of the Manor, of parcel of the Manor, doing ſuit at his Mill, this is a good tenure by the word (doing.) And it

is

is said, if the feoffor leaseth the Manor unt
9 Ass. p. 14. a stranger for life, rendring unto him 40 s.
M. 9 E. 3. 3. for the Manor, and 30 s. for the mulcture, an
the tenants of the Manor attorn unto the le
see, that the 30 s. are a rent-charge issuing o
of the whole Manor, &c.

639 And it is to know, that these wor
(Exceptis, & præter) are always of such thing
which the Feoffor, Donor, Grantor, Lesso
Releasor, or Confirmor, have in possession
the time of the feoffment, gift, grant, leas
release and confirmation: And therefore if
man seised of land, leaseth the same land f
life, Exceptis xii d. or Præter xii d. it is no go
Reservation, Causa patet, &c.

640 But if a man seised of land in fee, le
seth the same for life, Reservatis sibi inde xii d.
this is as well as if he had said, Reservand
sibi inde xii d. For there is not any differenc
but one sentence, ponitur absolutè, and the othe
ponitur gerundive.

641 But if a man be seised of four acres o
land, and of a house within the Town of Da
wherein is a Chamber, and doth enfeoff
stranger by deed of all his land and tenement
which he hath in the Town of Dale, Excepto,
or reservato sibi, the Chamber, or præter th
Chamber, and sheweth the certainty thereof
in that case the Chamber shall not pass by th
feoffment, &c.

T. 22 E. 3. 8. 642 If a man seised of a Manor leaseth the
same Manor by deed indented unto a stranger
for life, Exceptis & reservatis, to the lessor, Om-
nibus grossis arboribus in dicto manerio crescen.
By this Lease the great Trees shall not
passe.

643 And

643 And if a man ſeiſed of a Manor, doth leaſe the ſame Manor by deed indented for life, Exceptis & reſervatis quod benè liceat, to the leſſor, Succidere dare & vendere omnes groſſas arbores in dicto manerio creſcentes, &c. Quære, if the great Trees ſhall paſſe by the leaſe, &c. A man ſeiſed of a Manor unto which an Advowſon is appendant, doth thereof enfeoffe a ſtranger, Exceptis, reſervatis, &c. or prater one acre and nameth the acre, and the Advowſon, this a good exception; and the acre, nor the Advowſon ſhall not paſſe by the feoffment; and the Advowſon ſhall be appendant unto the acre which is reſerved, &c. 3 H. 6. 46. 5 E. 3. 66.

644 If a man hath a rent-charge in fee iſſuing out of land, and by fine he doth releaſe unto the tenant of the land all the right which he hath unto the land, Reſervat. Excep. & præter, the rent, it is a void exception. And ſo it is of a grant, confirmation, &c. Mutatis mutandis, &c. And if a man ſelleth a wood except twenty Oaks and ſheweth which in certain, it is a good exception. 16 E. 3. Fines 6.

645 And it is to know, that this word (ſalvo) ſhall be a good exception of ſuch things which are in the poſſeſſion of the Feoffor, Donor, &c. at the time of the feoffment, gift, &c. And alſo this word (ſalvo) giveth a new thing unto the Feoffor or Donor, which was not in him before, &c.

646 If a man be ſeiſed of a water in which he hath a fiſhing from the Town of Dale in the County of Middleſex unto the Town of Sale in the ſame County, and upon the ſame water he hath a Mill; and he doth grant unto a ſtranger

a ſtranger, Totam partem piſcariæ ſuæ de
quam procul terr. inde extendant, ita quod
34 Aſſ. p. 11. ipſe, nec hæredes ſui, nec molendinarii de
tero cum retibus nec aliis ingen. piſcar. Salvo
men ſtagno molendini, this exception
not ouſte the Grantée of the fiſhing in the
pool, and this (Salvo) ſhall have relation,
ly for the repairing of the Mill, and to do
things as are neceſſary unto the Mill,
But if I grant common unto a ſtranger,
all manner of Cattel within my Mano
Dale ſaving in one acre, and name the
the Grantée ſhall have Common in that
&c.

T. 12 E. 4. 11. 647 If there be Lord, and Tenant by fealty and xii d. rent, and the Lord doth releaſe all his right unto the tenant, ſaving to him
29 Aſſ. p. 20. his rent, it is a good reſervation, and the Lord ſhall have the rent in the ſame nature as he had it before.

648 If there be Lord and tenant by knight ſervice, viz. by homage, fealty, and eſcuage and xii d. Rent, and the lord doth grant the rent unto a ſtranger, ſaving unto him his ſeig-
M. 2 H. 3. 89. nory, it is a good ſaving. But notwithſtanding that, the Lord ſhall have the eſcuage, and yet it is not but a payment of money if the tenant will: and the Grantée ſhall have the xii d. rent as a rent-ſeck, &c.

649 If a man hath a Parſonage, and a Vicarage unto the ſame Church, and of one Advowſon. And by fine he granteth unto a ſtranger the Advowſon of the ſame Church, ſaving unto the Grantor, and his heirs, the preſentation unto the Vicarage, it is a good ſaving, &c.

650 If

650 If there be Lord & tenant by knights ſervice, and the tenant doth give the tenancy in tail to hold of him by one peny for all ſervices, Salvo forinſeco ſervitio, In this caſe this Salvo ſhall make the Donè to hold of the Donor by Knights ſervice, and yet the ſame was not in the Donor before, but the Donor was chargeable with Knights ſervice for the ſame land, unto him of whom he held it. Forinſecum ſervicium is ſuch ſervice by which the Donor held the ſame land, which he gave, &c. See divers good Caſes concerning Exceptions of Deeds in the Chapter of Deeds, and Conditions, &c. 31 Aſſ. p. 30. 26 Aſſ. p. 66. 27 Aſſ. p. 52.

651 Now is to ſhew what perſons may by their reſervations make a tenure. And unto what perſons they may make ſuch tenure, and then what things may be reſerved to make a tenure: And when the heires of him unto whom the Reſervation is made, ſhall have the things reſerved. And then ſomething ſhall be ſaid when the Reſervation of collateral things (which cannot make a tenure) ſhall be good, and when not, &c. And it is to know, That before the Statute of Quia emptores terrarum, That he who made an eſtate unto another in Lands, or Houſes, might make a reſervation upon the ſame eſtate according unto the intereſt which he departed with, if not, that it were in ſpecial Caſes, &c.

652 And therefore if before the Statute of Quia emptores terrarum, there were two joynt-tenants of lands, or houſes in fee, which they held by fealty, and 2 s. Rent, Or by fealty and a Horſe, and they enfeoff a ſtranger of the Lands or Houſes, to hold of one of them

by fealty and xii d. The feoffée ſhall hold the moitie of him, by fealty and xii d. becauſe by the feoffment he did depart but with a moity in right, and yet he ſhall have the whole rent which is reſerved, notwithſtanding that it be a ſeveral rent, becauſe it is reſerved only to him, and he may well reſerve the ſame unto him alone, notwithſtanding that he joyned in feoffment with his companion, &c. And the Feoffée ſhall hold the other moity of the other joynt-tenant, to whom the reſervation was not made by fealty, and xii d. Rent, and he and his companion ſhall hold together the whole land over by two ſhillings, becauſe that then the Rent is ſeverable; and if they themſelves hold the ſame land over by a horſe, then it is ſaid, that the Feoffée ſhall hold the moity of him by fealty and a Horſe, Tamen quære, becauſe he was party unto the reſervation made unto his companion, &c. But if the joynt-tenants hath enfeoffeth a ſtranger to hold of both of them, or of one of them, and expreſſed no ſervices, they are void words, and the Feoffee ſhall hold of them as they held over.

653 If two joynt-tenants were of Land, and before the Statute of Quia emptores terrarum, one of them enfeoffeth a ſtranger of what thereof belongeth unto him without reſerving any thing, the feoffée ſhall hold of his Feoffor by the moity of the ſervices by which the Feoffor, and his joynt companion held over, if they hold over by ſeveral ſervices, &c. And notwithſtanding this feoffment, the Feoffor and he who was his joynt companion ſhall hold the ſame land over of their Lord as they held before, ſo as the avowry of the Lord is

not

not altered by this feoffment. And also the Feoffor shall not distrain the Cattel of him who was his joynt companion, because he hath an interest in the land by a more ancient title then his seignory began, &c.

654 If before the Statute of Quia emptores terrarum, there had been Lord, Mesne, and Tenant, and the Mesne, and the Tenant had enter-married, the same should not have altered the Lords advowry. Or if the Tenant had enfeoffed the Mesne of the tenancy, it should not have altered the advowry of the Lord, &c.

655 If Lord, two joynt-tenants, Mesne, and tenant had been, and every of them held of the other by fealty, & xii d. And the tenant had enfeoffed one of the joynt-tenant mesnes before the Statute of Quia emptores terrarum, of the whole tenancy, it seemeth the feoffee shall hold one moity of the tenancy of him, who was his joynt-tenant mesne by fealty, and 6 d. rent: For inasmuch as his joynt mesne might have granted what belonged unto him of the menalty unto a stranger, and his grant should have been good, with attornment of the tenant, notwithstanding that it were but by matter of writing; and if it were by matter of Record, it should be good without attornment of the tenant, &c. And if the Mesn who made the feoffment, before the feoffment had released all his right in the tenancy unto the tenant, by this release the moity of the menalty had been extinguished, & no more. So that notwithstanding this release, his joynt mesne may avow upon the tenant, for the moity of the menalty, viz. for fealty and 6 d. So that 5 E. 3. 31.

it appeareth that by the feoffment made unto one Meſne, there is but a moity of the menalty extinct, viz. the moity which in right doth belong unto the Feoffée, and no more, &c. So as for one moity of ½ tenancy, there are Lord, Meſne, and Tenant, And for the other moity of the tenancy, Lord, and Tenant.

656 If before the ſtat. of Quia emptores terrarum, there had bin Father and two Daughters, and the Father being ſeiſed of one acre of land, thereof enfeoffed his eldeſt daughter to hold of him, and his heir by fealty and 12 pence, and the father dieth, and the Seignory deſcendeth unto the two Daugters. Now the eldeſt Daughter ſhall hold of her younger ſiſter by fealty & 6 d. But if the eldeſt daughter being ſeiſed of one acre of Land before the Statute of Quia emptores terrarum, had thereof enfeoffed her Father, to hold of her and her heirs by fealty and 6 d. and the Father thereof die ſeiſed, and the two Daughters enter into the ſame acre as Daughters, and one heire unto their Father: In this caſe, the eldeſt Daughter ſhall not diſtrain for any Rent, during the time ſet in poſſeſſion in Common with her ſiſter. But after Partition is made between her, and her ſiſter, her ſiſter ſhall hold her part of her, by fealty, and three pence, &c.

33 Aſſ. p. 15.

657 If before the Statute of Quia emptores terrarum, Lord and Tenant had béne of a Carve of land by Knights ſervice and the tenant had been diſſeiſed of the land, and the Uncle of the tenant had releaſed all his right which he had in the moity of the tenancy unto the Diſſeiſor, and by the ſame deed of releaſe had

had bound him, and his heirs to warrant the ſame moity, unto the Diſſeiſ-e and his heirs, and the Uncle dieth without iſſue, and the warranty deſcendeth upon the Diſſeiſee, and the Diſſeiſee taketh a wife, and hath iſſue a ſon, and the Diſſeiſor enfeoffeth the ſon of the tenancy, to hold of him by Knights ſervice, and afterwards the father dieth. Now the ſon is remitted unto the moity of the tenancy, and ſhall hold the ſame moity by priority, &c. and the other moity he ſhal hold by poſteriority, &c.

658 If before the Statute of Quia emptores terrarum, A man being ſeiſed of one acre of land, leaſeth the ſame acre unto a ſtranger for life, and afterwards granteth the reverſion in fee unto another ſtranger, to hold of him & his heirs by knights ſervice, this is a good tenure; But the Grantor ſhall not diſtrein for the ſervices, during the life of the leſſee, &c.

659 And if before the Statute of Quia emptores terrarum, A man ſeiſed of one acre of land, leaſeth the ſame acre for life, and afterwards releaſeth all his right in the ſame acre of land unto the leſſee, to have and to hold unto him, and his heirs, &c. Or confirmeth the eſtate of the leſſee to have and hold the ſame acre to him, and his heires, to hold of him by Knights ſervice, the Releaſor may diſtrein for ſuch ſervices, or any of them in the Land, whereof the leaſe, releaſe, or confirmation was made, as often as the ſame ſhall be behinde, &c.

660 If a man ſeiſed of land in fee in the right of his wife, and before the Statute of Quia emptores terrarum, the husband alone thereof enfeoffeth a ſtranger without ſaying

more. The Feoffee shall hold of the Husband by such services, as the husband and his wife held over, for the husband alone did not hold over, But if the husband and wife had joyned in the feoffment, to hold of the husband, these words (to hold of the husband) are void. And the Feoffee shall hold of the husband and wife by such services as they held over, in so much that if the husband dieth, and the Wife after the death of her Husband accept of the services from the Feoffee, she shall not avoid the feoffment in a Cui in vita. And if the husband and wife have joyned in the feoffment to hold of the wife without more saying, the feoffee shall hold of the husband and wife, in so much that if the wife dieth, the Feoffee shall hold of the Husband until the feoffment be avoided by the heir of the Wife in a Cui in vita, &c. And then the heire shall hold of the Lord paramount.

21 H. 6. 14.

P. 10 E. 4. 5.

661 If before the Statute of Quia emptores terrarum, two coparceners were of a Carve of Land in fee, and one of them releaseth all his right, &c. unto his companion reserving rent, it is a good Reservation, because the Release is in the part of his releasor, en le per, by force of the release.

662 But if two joynt-tenants were of a Carve of Land in fee, and before the Stat. of Quia emptores, &c. one of them release all his right in the Land unto his companion, reserving Rent, the same is a void reservation to make a tenure. But if perhaps such release were by deed indented, and words of grant of release, &c were comprised within the release, or onely words of reservation without words of

of grant, then the Leſſor ſhall have the rent reſerved as a Rent-ſeck: and if the reſervation were with words of diſtreſſe, then the Releaſor ſhall have it as a Rent-charge.

663 If Lord and Tenant are in fée by fealty, and xii d. and before the Statute, &c. the Lord releaſeth unto the Tenant all his right in the tenancy, to hold of him by xx d. it is a void tenure, becauſe that he departed with no eſtate executed nor to be executed hereafter by the releaſe upon which he created the tenure. 17 E 3.69.

664 If before the Statute of Quia emptores, &c. A man ſeiſed of land in fée, doth thereof enfeoff a ſtranger to hold of him and his Wife by xx d. It is a void tenure as unto the wife, and it is a good tenure for the whole rent as to himſelfe, &c. And it is ſaid, the reaſon is, becauſe the Wife is a ſtranger unto the feoffment: But notwithſtanding that the wife were a party to the feoffment, &c. if ſhe had nothing in the land whereof the feoffment was made, at the time of the feoffment, yet the tenure is void as unto the wife, if it be not by fine, becauſe ſhe departeth with no poſſeſſion nor eſtate, &c. But it ſhall be altogether the feoffment of the husband: But if the tenure be by fine then it ſhall be good unto the wife by way of concluſion, &c. M. 11 H. 4. 1.

665 If a man ſeiſed of Land, and before the Statute, &c. do thereof enfeoff a ſtranger, to do homage and fealty unto another ſtranger, it is nothing worth, for ſervice cannot be done unto any other then the Lord. And yet the Steward or other ſervant of the Lord may receive fealty for the Lord, &c. But the fealty 1 E. 4. 1. 32 E. 3. 3.

is made unto the Lord, notwithstanding that he be not present.

666 But if before the Statute, &c. A man being seised of land in fee, doth thereof enfeoff a stranger, to be the Butler unto another stranger, or to pay unto a stranger 10 s. yearly at the feast of Easter; or to cover the house of another stranger, this is no tenure in him whose house shall be covered, or, &c. nor hath he any remedy if the Feoffee do not the same; but the Feoffee holdeth of the Feoffor, and if in such case the rent be not paid, &c. the Feoffor may distrain, &c.

T. 7 E. 4. 11. P. 2 E. 4, 5.

667 If there were Lord, Mesne, and Tenant, and before the Statute, the tenant doth enfeoff a stranger of the tenancy, to hold of the Lord paramount, the same is void: But if the feoffment were made to hold of the Mesne, it were good and he shall hold of him by the same services, which the Feoffor held of the Mesne: But the Tenant cannot make a new tenure between the Mesne, and his Feoffee by new services, for to the services reserved the Mesne is a stranger. And if the tenant had enfeoffed a stranger before the Statute, &c. to hold of him, and the Mesne, the feoffee should have holden only of his feoffor.

668 And if the Tenant before the Statute had enfeoffed I. S. to hold of the Mesne, and T. K. the feoffee should have holden onely of the Mesne. If there had ben a woman seignoresse before the Statute, and tenant, and the woman had taken husband, and the Tenant enfeoffeth a stranger, to hold of the husband, it is a void tenure, and the feoffee shall hold of his feoffor, &c. And if there had ben two

joynt

joynt Seigniors and Tenant; And before the ſtatute the tenant had enfeoffed a ſtranger to hold of him, and one of the joynt Lords, it is a void tenure, and the feoffee ſhould hold of his feoffor.

669 If Lord and Tenant had been before the Statute, &c. And the Lord granteth his ſeignory unto a ſtranger, and the tenant enfeoffed another ſtranger, to hold of the grantee of the Lord, the ſame had amounted unto an attornment, and alſo to make a new tenure, and yet the grantee is a ſtranger unto the reſervation of the ſeigniory between the Grantor, and the Tenant. But as to that, it may be ſaid, that there is a privity by matter in fait, viz. by the grant with the attornment, and ſo ſhall be, notwithſtanding that the Lord had granted the ſame unto the uſe of the grantor, &c. And the ſame Law is where a menalty doth eſcheat, Mutatis mutandis. And if there had been Lord, and two joynt-tenants before the ſtatute, &c. and they had enfeoffed a ſtranger, and one of them had aſſigned the feoffee to hold of the Lord paramount, and the other had aſſigned the feoffee to hold of himſelfe, &c. the ſame had been good, &c.

670 If Lord and Tenant had been before the Statute, of two acres of land, and the tenant did thereof enfeoff a ſtranger, to hold one acre of the Lord paramount, and to hold the other acre of him, the ſame is good, &c. And it is to know, That the beginning of a Manor was, when the King gave a thouſand acres of lands, or a greater or leſſer parcell of land unto one of his Subjects, and his heirs, to hold of him and his heirs, which

tenure

tenure is Knights service at the least. And the Donee did perhaps build a mansion-house upon parcel of the same land, and of twenty acres parcel of that which remained, or of greater or lesser parcel before the Statute of Quia emptores, &c. did enfeoff a stranger to hold of him, and his heirs, as of the same mansion-house, to plow ten acres of arrable land, parcel of that which remained in his possession, and did enfeoff another of another parcel, &c. to carry his dung unto the Land, &c. And did enfeoff another of another parcel thereof, &c. To goe with him to war against the Scots, &c. And so by continuance of time he made a Manor, &c.

671 And if a man be seised of the Manor of Dale in fee, and another man hold of him as of his Manor of Dale, to cover the Hall, or other house of the same Manor, if the house fall and be not re-edified by the space of seven years, or for a greater or lesser time. Now for this time the tenant which holdeth by such service is discharged: But when such house is re-edified, the Tenant is bound to do the service, if it be not re-builded longer, or larger, so as it shall be more chargeable unto the Tenant for to cover the house now, then it was at the time the tenure was created: And if the house be in such manner re-edified, quære, if the tenant shall be bounden to cover so much thereof as shall amount unto the length, and breadth, what it was when the tenure was created. And if such a house be thrown down by the Turks, enemies unto the King, who enter into the Realm with a great Army for to conquer the same, the Law is as before is said, Mutatis mutandis, &c.

672 But

672 But if such a house be pulled down by neighbours, or by other men; Or if such a house be burned by negligent keeping of the neighbours fire, in such case he is not bounden to cover the same when it is builded again, for the Lord shall recover damages for the same house, unto the value of the house, as it was at the time of the burning, or at the time of the pulling down thereof, so that the tenant is not bound to make another covering to the same house, then he is to make unto another house burnt, or pulled down, for if he should be otherwise bounden, then the Lord should have double satisfaction for the same thing, &c. quære, if such a house fall by the negligence of the Lord himself, or with his will, and afterwards be re-edified, whether and how the Tenant shall be bounden to cover the same house, &c. 10 H. 7. 7.

673 If a man be seised of the Manor of Dale in fee, and a stranger holdeth of him as of his Manor of Dale, to cover the Kitchin of the same Manor, or other house: Or else he holdeth of him as of the same Manor, to scowre a ditch of the same Manor. Or if he hold of him as of the same Manor by Knights service, or in soccage: In such case, if before the Statute, &c. a stranger be enfeoffed of the Manor, and the tenants attorn unto him, he may avow for all such services: But for such services, viz. for the scowring of a ditch, or for the covering of a house, notwithstanding that he be seised of them, and he distrein for them, and reservations be made, he shall not have an Assise, because they lie onely in feasance, but he may have of them a Præcipe quod faciat, &c.

674 And

674 And if before the said Statute, Lord and Tenant have been of two acres of land by fealty and xii d. Rent, and the Tenant hath enfeoffed a stranger, of one acre, or of a greater, or lesser part of the tenancy, it was at the liberty of the Lord in what parcel he would distrein for the whole rent, for by such feoffment made unto a stranger, the rent was not apportionable by the common law, notwithstanding that the Feoffee held of his Feoffor; But now by the statute the Feoffee shall hold pro particula illa of the Lord of the feoffor.

M. 2 E. 4. 16.

675 But if the Tenant leaseth parcel of the same for years, or for life, or giveth parcel of the tenancy in Frank-marriage, or in taile. In that case the Lord paramount may distrein for all his rent in every parcel of the tenancy; And the lessee, or donee, is put unto his remedy against his lessor, or donor, or him in the reversion. And the reason is, because such lessee or donee doth not hold of the Lord paramount, &c.

676 If there be Lord and Tenant by fealty and xii d. and the tenant at this day doth enfeoff a stranger of the moity of the tenancy, in this case it seemeth unto some, that the rent shall not be apportioned, for these words, Pro particula illa shall be intended where the feoffment is made of one acre of the tenancy in severalty, or of a greater or lesser part of the tenancy in severalty, Tamen quære.

T. 22 E. 4. 16.

677 And if there be lord and two joynt-tenants, and one of them alieneth that which belongeth unto him, It seemeth unto them, that the rent shall not be apportioned: But if coparceners make partition, the same shall be

be taken by equity, and that before the Statute, ſo that in that caſe the rent ſhall be apportioned. The ſame law is, if the Lord exchange parcel of the tenancy in ſeverality in fee. If the tenant doth enfeoff the Lord of the moity of the tenancy in ſeverality, the rent is not apportionable by this ſtatute, but it is apportionable by the common law, if the rent be ſeverable.

678 And if before the Stat. the villein of the Lord had purchaſed parcel of the tenancy, and the Lord had entred, &c. Or if the Lord had recovered parcel of the tenancy by falſe oath, or upon a falſe title, &c. the rent was apportionable at the commō law, if it were ſeverable. And if after the ſtatute two coperceners were of the tenancy, & they had made partition, the rent was apportionable, if it were a rent ſeverable.

679 But by force of theſe words pro particula illa, a menalty ſhall not at this day be apportioned: as put caſe, there be Lord, two joynt meſnes, & tenant, of one acre of land by fealty, and xii d. rent, and one granteth the belongeth unto him of the menalty in fee unto a ſtranger, and the tenant doth attorn unto the grantee, the menalty ſhall not be apportioned; for the words pro particula illa, are intended of the ter-tenāt, &c.

680 And the ſaid Stat. of quia emptores terrarum ſaith, ſecundum quantitatem terræ, that ſhall be intended the value of the land, and not the quantity, for perhaps one acre is worthy more then another acre by reaſon of a mine or otherwiſe, it ſhall be apportioned according to the value, &c. And if after the apportionment a houſe built upon the land fall downe, yet it ſhall be holden as it was apportioned, &c.

So

So is it if parcel of the land which is apportioned, be surrounded by tempest. Quære, if it be drowned by the Sea in such manner that it cannot be re-gained by any means.

681 And if there be Lord and Tenant of two houses by fealty and two shillings Rent, and the tenant after the Statute doth infeoff a stranger of one of the houses, and the rent is apportioned, and afterwards the house doth fall, or is burnt, yet the rent remaineth, and the Lord may distrain for the same upon the land, where the house stood, &c.

T. 9 E. 4. 21. per Danby.

682 And perhaps a Rent shall be apportioned for a time. As in case, there be Lord, and a woman tenant by Rent severable; and the woman taketh a husband, and the husband doth distrain parcel of the tenancy in severalty in fee, and the Rent is apportioned, and the husband dieth, and the wife doth re-continue this parcel, which was discontinued by her husband in a Cui in vita, brought against the Feoffee. Now this apportionment is defeated, and determined, &c. The same Law is of a feoffment of parcel of the tenancy made upon condition, &c, Mutatis mutandis, &c.

683 So shall it be, if parcel of the tenancy in severalty be recovered by erroneous processe, or by false verdict, or upon a false title, &c. and afterwards it is re-continued, &c. The Statute saith that the Feoffee shall hold nothing of the Lord, and if it be of part, then for that part, Et decidat Capitali Domino ipsa pars servitii, &c.

M. 22 E. 3. 36.

684 If there be Lord and tenant of three acres of land by homage, fealty, suit of Court, Escuage, and the rent of a Horse payable at the

the Feaſt of Eaſter, or by the rent of a Hawk, or of a Roſe, &c. And the Tenant after the ſtatute doth enfeoff one man of one acre, parcel of the tenancy, and doth enfeoff another man of another acre parcel of the tenancy, in this caſe every of them ſhall hold of the Lord, by homage, fealty, and ſuit, but the Eſcuage ſhall be apportioned, and the reliefe when it falleth as a Rent ſeverable ſhall be apportioned; and the Lord ſhall have but one Horſe, or one Roſe, or one Hawk of them all not apportionable: And he ſhall make one avowry upon them all, for ſuch entire Rent, although that the lands be ſeverable, as he may make at the Common Law for ſuch entire rent, &c. And notwithſtanding that by the ſaid Statute the feoffee of parcel of the tenancy in ſeveralty, ſhall hold of the Lord Pro particula illa, yet before the Lord is bounden to avow upon him, he ought to give notice unto the Lord; and yet in right he holdeth of the Lord immediately, and the Lord ſhall have ward, or relief, or a Ceſſavit, or aſſiſe of the rent before notice given unto him. But the Feoffee ſhall not have acquital before notice, &c. the notice ought to be given in this manner, viz. To ſhew the feoffment unto the Lord, and if the tenure be by homage, to tender unto him homage and fealty, and all the arrerages of the rent: Or otherwiſe the Lord is not bounden to take the notice, for the Feoffor ſhall not be diſcharged before the arrerages paid: and the feoffee of parcel ought to tender all the arrerages, &c. And if there be two joynt Feoffees, it behoveth them to give their notice joyntly. An infant who is a Feoffee ſhall give notice; and

22 E. 3. 34.

7 E. 4. 27. P. 4 E. 3. 22

T. 47 E. 3. 4.

and an infant who is Lord shall take notice &c.

685 And the husband who is seised of a seigniory in the right of his wife (if the tenure be by homage) he and his wife joyntly shall take the notice: But if the tenure be but by fealty and rent, the husband alone may take the notice: But if a singlewoman be enfeoffed of parcel of the tenancy, and before notice she taketh a husband; in such case the husband and the wife ought to give the notice joyntly. And an Abbot who is Feoffee of a tenancy, shall give notice, &c. But he who hath the whole tenancy, or parcel of the same in severalty by matter of record, as by recovery, or by fine, shall not give notice, &c. For the Lord is bound to take notice thereof, &c.

686 But if a fine be levied, Sur conusans de droit, of a tenancy, and the Conusor be in possession of the tenancy, it is at the liberty of the Lord, whom hee will take for his Tenant before the Conusee entreth, &c. But it is to know, if at this day a tenure shall be made by void reservation, it behoveth that the reversion of the same thing, out of which the reservation is made, and of the estate which is made, remain in him which maketh the reservation, if not, that it be in special cases, &c.

38 E.3. 7. 687 And therefore if there be two joynt-tenants of land, to have and to hold the same land unto them, and unto the heires of one of them; and they joyn in a gift in taile unto a stranger, reserving rent unto him who had but an estate for life, this reservation is void to make a tenure. For notwithstanding that if the Donee in taile dieth without issue, during

during his life, and the life of his joynt Donor, that then he shall have the Land again; yet that doth not prove that any reversion of the same land, after the gift made, remaineth in him who had but an estate for life at the time of the gift: For if at this day a man seised of land doth enfeoff thereof a stranger by deed indented, reserving unto him, and unto his heirs, 10 s. Rent payable, &c. upon condition, That if the Feoffor pay unto the Feoffee 10 l. &c. That then it shall be lawful unto the feoffor, and his heirs to re-enter. In this case, the feoffor may have again the land, and yet the reservation is void as to make a tenure &c.

688 But because it is by deed indented, the feoffor shall have the rent reserved as a Rent-seck; and to this purpose it shall take effect in the feoffor as a Grantee of the feoffee, in so much as if it be reserved with clause of distress, the feoffor shall have it as a rent-charge. So it appeareth, that when two joynt-tenants of land, & unto the heirs of one of them joyn in an estate in tail, that nothing of the reversion of the same land doth remain in him who had but an estate for life, &c. And yet if Lessee for life be of land, and he maketh a gift thereof in tail unto a stranger, reserving rent, &c. that this reservation maketh a tenure betwixt him, and the Donee, &c. as long as the gift continues in force, because that by the gift he hath gained unto himself a reversion in fee, in the same land whereof the gift is made, &c. 31 E. 3. parts 60. 14 Ass. p. 14.

689 But put case, If two or three joynt-tenants are of land, to have and to hold unto

the heirs of one of them, and they joyn in a gift in tail without saying more, the Donee shall hold of them by the like services, as they hold over. But if they have reserved new services unto them all upon such gift, quære, how the same shall enure, &c.

690 If there be disseisor, and disseisee of any acre of land, and they both enter into the same acre, and deliver an estate thereof unto a stranger in tail, to hold of the Disseisee, and his heirs by homage, fealty, and escuage, this is a good tenure. because the disseisee is the donor, and the reversion doth remain in him, because he was remitted before the libery of seisin made unto the Donee in tail, &c. But if they had given it in tail to hold of the disseisor, it is a void tenure, and then the Donee shall hold of the Disseisee by the like services as he held over. Causa patet.

691 If a man seised of one acre of land in fee, leaseth the same unto a stranger for years, and the lessor and lessee joyn in a gift in taile unto a stranger, reserving 10 s. unto the Lessor, the same is a good tenure: But if Lessee for life of one acre of land joyneth in a gift in tail of the same acre, with his lessor unto a stranger by deed, containing words of confirmation, to hold of the lessor by 10 s. rent, Quære thereof: If Cestuy que use of lands entreth upon the Feoffées, and leaseth the same land unto a stranger for life, according unto the Statute of 1 R. 3. reserving 10 s rent, the same is a void reservation to make a tenure, for the reversion of the same land is not in the Lessor, but it is in the Feoffées, and they are strangers unto the lease, and the reservation,

M. 5 H. 7. 5. H. 8 H. 7. 5. T. 15 H. 7. 25. T. 27 H. 8. 13.

&c.

&c. But if such lease, and reservation be by deed indented, then the Lessor shall have the rent, as a rent-seck.

692. If Cestuy que use hath leased the Land in use for terme of years, reserving rent, &c. by word: In such case the Lessor shall not distrain for the rent reserved, because no reversion doth remain in him, &c. But it is said, That he may have an Action of debt for the rent against the Lessee, because it is but as a contract. As if a man selleth lands or tenements for money by word he may have an action of debt for the money, &c. And it hath been holden, that in such case the Lessor shall not have an action of debt for the Rent reserved, unlesse it be by deed indented; and the reason as it seemeth is, because it cannot be taken as a contract, because it is by reservation: And then if the Lessor take advantage thereof, it behoveth him to have it as a Rent-seck: and then it ought to take effect in the Lessor, as a grant of the Lessee; and rent cannot take effect in any person by way of grant by word, if not that it be in case of partition, &c. and other special cases, &c. Tamen quære, for such leases are commonly made with reservations by Cestuy que use, by word, &c.

693. If there be lessee for 20 years of lands or tenements, and he granteth the same lands or tenements unto a stranger for parcel of the years, reserving unto him 20 s. &c. In this case the Grantor shall distrain for the rent reserved, or have an action of debt at his pleasure; and the reason is, because by common intendment he is to have the same land, after

the years determined, because he hath granted unto him but parcel of the years, so as the remainder of the years are in him.

P. 10 E. 4. 3. 694 If there be Disseisor, and Disseisée of one acre of land, and the Disseisée doth release all his right in the same acre unto the Disseisor, To have and to hold the same acre unto him, and his heirs of his body, reserving unto him, and his heirs 10 s. Rent payable, &c. it is a void reservation to make a tenure at this day; for notwithstanding, that such release doth go by way of making an estate, yet the fee of the land, which is in the Disseisor, shall not be devested out of him, by such release, if the release be not by deed indented; and if it be, then Quære thereof. For then it seemeth 7 E. 4. 25. that the releasor shall have the reversion of the fee by conclusion. Yet if there be two joynt Disseisors, and the Disseisée doth release unto one of them, he shall hold out his companion, &c.

695 If there be Lord, and Tenant of land by fealty, and xii d. and the tenant leaseth the tenancy unto a stranger for life, without any more saying. In this case the lessee shall hold of his lessor by fealty onely, and not by the services by which his lessor holdeth over: But if the lessor hath reserved any service, or Rent upon the lease, he shall have the same: But if at this day nothing be reserved upon a gift in tail, the Donee shall hold of the Donor by such services as he holdeth over. As if a man seised of Land in fee, leaseth the same Land for life, reserving ten shillings, and the lessee giveth the same land unto a stranger in taile, and doth not reserve any thing upon the gift

in

in taile, quære, How the Donee ſhall hold the ſame, &c.

696 Now is to ſhew, What things may be reſerved for to make a tenure. And as to that, know, that all ſuch things as lie in feaſance, or in tenure, may be reſerved for to make a tenure; for ſuch things may be ſaid Rents, or Services. As if before the Statute of Quia Emptores terrarum, a man ſeiſed of Land do enfeoff there of a ſtranger, To hold of him and his heirs to ſcoure the ditch of the Feoffor, &c. Or to cover his Hall, or to repair his Kitchin, or to give unto the feoffor and his heires when he ſhall come unto his Manor of Dale, a dinner; or to finde a Chaplain every Friday in the week yearly in his Manor of Dale, &c. Or to give unto the feoffor x s. rent, or a horſe, or herbs, or arrows, or a ſpear, or a launce, or a cup of ſilver, or a pair of ſpurs, or a ring of gold or ſilver, &c. Or a a quarter of wheat, or of barley, &c. Of all the things aforeſaid a tenure may be made by way of reſervation: Or of all other things which be in feaſance or in tender, a tenure may be made by reſervation upon a feoffment, &c. And at this day a tenure may be by reſervation of ſuch things, upon a gift in taile, or upon a leaſe for life, &c.

697 And it is to know, that when the Law maketh the tenure or reſervation, Then the heirs of the feoffor, donor, or leſſor, ſhall have the ſervices as well as the feoffor, donor, or leſſor himſelfe ſhall have them: But if the reſervation of the ſervice, or rent, &c. be made by expreſſe words of the party, &c. Then the heirs of the feoffor, donor, or leſſor, ſhall not have M. 10 E. 4. 18.

the services, and Rent reserved, if not, that it be reserved unto them by expresse words, &c.

698 And therefore, if before the Statute of Quia emptores terrarum, There be Lord and Tenant of land and tenements by Knights service, and the tenant doth enfeoff a stranger of the tenancy without reserving any thing, the Feoffee and his heirs shall hold of the Feoffor and his heirs by Knights service, if the Feoffor and his heirs hold over by the like services: But if the Feoffor himself holdeth over by Knights service, during his life, and no longer; and that after his death his heirs shall hold by fealty onely, or by other services. Now the Feoffee and his heirs shall hold of the Feoffor and his heirs by the like services; Mutatis mutandis, and so shall it be, if the tenant at this day doth give the tenancy in tail without reserving any thing, Mutatis mutandis, &c.

699 But if the feoffor, &c. or donor, &c. Or lessor for life reserve unto him upon the feoffment before the said Statute: Or reserve unto him upon the gift, or lease, after the said statute, Knights service, or fealty and 10 s. or a Horse, &c. and dieth: his heir shall have onely fealty, because the reservation doth not extend unto the heir of the feoffor donor, or lessor. But if, in the same case, the feoffor, donor, or lessor grant his seigniory, or reversion, &c. and the tenant doth attorn unto the Grantee, the Grantee shall have all the services, and the rent reserved, &c. during the life of the Grantor, &c.

16 Ass. p. 38.

P. 11 E. 3. Ass. 86.

700 And if a man seised of two acres, leaseth

ſeth the ſame unto a ſtranger for life, yeeld-ing for one acre, (and ſheweth which acre in certain) 10 s. unto the leſſor, and his heirs, and yeilding for the other acre 10 s. &c. unto the leſſor, and the leſſor dieth, and the reverſion of both acres do deſcend unto his heir, the heir ſhall not have the 10 s. laſt reſerved unto the leſſor &c.

701 And if a man ſeiſed of land after the Statute of Quia emptores terrarum, giveth the ſame land unto a ſtranger, Pro homagio & ſervicio ſuo: To have and to hold the ſame acre unto him, and his heirs of his body begotten: In this caſe the iſſue of the Donee ſhall do fealty onely unto the Donor, and his heirs; And the heirs of the Donor ſhall have onely fealty of the Donee, and his iſſues, &c.

702 And it is to know, That a reſervation of things which lie only in prender or uſage, cannot make a tenure. And therefore, if a man ſeiſed of Land, and Wood, before the Stat. of Quia emptores terrarum, doth thereof enfeoff a ſtranger, and after the ſaid Statute doth give the ſame Land and Wood in tail, or leaſeth the ſame for life unto a ſtranger, reſerving unto the Feoffor, Donor, or Leſſor common for four Beaſts in the ſame land, and for to ſuffer the Feoffor, Donor, or Leſſor to take yearly in the ſame Wood three load of Eſtovers for fewel; this reſervation is void to make any tenure; and the reaſon why ſuch things cannot be ſaid a reſervation is, becauſe that the Feoffor, Donor, or Leſſor cannot take profit thereof, but onely by his own act, and a man cannot do ſervice unto himſelfe: And therefore ſuch reſervation is

void, if it be not by deed indented, and then he shall take the same by way of grant of the feoffee, donee, or lessee.

703 And therefore if a man seised of land, doth enfeoff a stranger thereof by deed indented, or giveth the same land in taile, or leaseth the same for life unto a stranger by deed indented, reserving common without number unto him, and his heirs, this is a good grant in fee-simple if it be reserved upon a feoffment: But if it be reserved upon a gift in tail, then it shall enure and take effect by way of grant of the Donee, and shall be good and effectual during the life of the Donee, and no longer, &c. The same law is, if it be reserved upon a lease for life by deed indented, &c.

704 And it is to know, that the donor, grantor, or lessor, cannot reserve a lesser estate in the same thing in which they depart withal by the gift, &c. then they had in the same at the time of the gift, &c. by matter in deed or writing. Quære, if it be by writing indented, &c.

H. 44 E. 3. 5. 705 But if such reservation be by fine, it shall be good by way of conclusion, &c. And therefore if a man seised of land in fee, giveth the same land in fee, or giveth the land in tail unto a stranger, or leaseth the same land unto a stranger for life, the remainder thereof unto the donor or lessor for life, or in tail, the remainder over unto a stranger in fee: In this case the remainder unto the donor, or lessor is void, and yet the remainder over unto a stranger is good, &c. The same Law shall be, if the donor or lessor had not had but an estate for years, or for life in the land given, or leased, &c. at the time of the gift or lease with the remainder

mainder over, in manner and forme as before is ſaid, for when leſſee for years or for life, maketh ſuch a gift or leaſe, &c. They which take by ſuch gift or leaſe cannot diſable their donor or leſſor to make ſuch a gift, or leaſe unto them, and ſoit doth not lie in them, to plead that their donor, or leſſor had not a fee at the time of the gift or leaſe made, &c. But notwithſtanding ſuch gift or leaſe made by leſſee for years, or for life, he or they who hath or have right may avoid the ſame by entry, or by action, as their caſe is, &c.

706 If husband and wife, and a third perſon be joynt-tenants of land or tenements in fee, and leaſe the ſame lands and tenements by deed poll unto a ſtranger for life, ſaving the reverſion unto them three, and unto the heires of the husband, notwithſtanding that the reſervation ſhall be unto them all three joyntly in fee. The ſame Law is of things which lie in grant, Mutatis mutandis, if not that it be in ſpecial caſes: But if ſuch reſervations were made by fine, they were good enough, if not, that it be in ſpecial caſes, &c.

CHAP.

CHAP. XI.

Conditions.

707 NOw is to speak of Conditions: And first, It is to know, That Conditions may be annexed unto things inheritables: unto Free-holds, and unto Chattels reals and personals: unto things inheritables and free-holds. As put case, a feoffment, or a gift in tail, or a lease for life, or the life of another, be made of lands or tenements upon Condition: Or if a grant of a Rent, or Common, &c. be made in fee-tail, or for life, or for anothers life upon condition, &c. unto Chattels real: As a man seised of land, leaseth the same land by indenture, unto a stranger for the terme of five years upon condition, that if the lessee pay unto the lessor within the two first years ten marks, that then he shall have
15 H. 3. 8. fee in the land let, or otherwise but an estate for five years, and livery of seisin is made according unto the deed: In this case, it hath been holden, that the lessee hath a fee-simple conditional presently; which it cannot be, because that the words of the Condition are,

Verba

Verba de futuro, viz. That if he pay, &c. that then he shall have fee.

708 And therefore if a man seised of land in fée, doth lease the same unto a stranger for years, upon condition, that if the lessée be ousted of the land within the terme by his lessor, that then he shall have fée, &c. Now if the lessee within the terme be put out by a stranger without the assent of the lessor, the lessor shall have an assise of this ouster, and not the lessée; for in such case, the Free-hold did not accrue unto the lessée, but when the condition is performed, and at all times before the condition performed, the Free-hold doth remain in the lessor: And yet if a man seised of land, doth lease the same land unto a stranger for life, and doth grant the remainder over of the same lands unto the right heirs of I. S. which I. S. is then alive, in that case, the fée is an abeyance, viz. in the consideration of the Law, and is in no person certain: and the reason is in that case, because the remainder is granted by words in the present tence; and also in this case the free-hold is not to be put in abeyance: And in the principal case, if the free-hold and the fée, &c. should not be in the lessor, &c. until the Condition be performed, then would it follow, that the heir of a Disseisor by his act shall put the Disseisée from his action: And all other persons who have right unto lands or tenements, by such means, the tenant of the free-hold by his own act might put them from their actions; for the writ of Entre en le per, and such other actions ought to be brought and pursued against the tenant of the free-hold, &c. 9 H. 6. 29. 2 H. 7. 3. T. 12 H. 7. 17.

709 But

709 But if a Parſon of a Church be ſeiſed of Glebe-land in the right of his Parſonage, or Vicarage, unto which land a ſtranger hath right of action, and the Parſon or vicar dieth. In this caſe, during the time of the vacancy of the Church, he that hath right of action ſhall not uſe or follow his action, becauſe that during the vacancy the free-hold is in no perſon, &c. The ſame Law is, as it ſeemeth, if ſuch a Parſon, or Vicar, doth reſigne his Beneſice into the hands of the Ordinary, in this caſe during the time of the vacancy, he who hath right of action unto the Glebe-land cannot commence his action, &c. and yet the Church doth become void by the act of the Incumbent, &c. But that is a ſpecial caſe, and the ſame Law ſhall be of the like ſpecial caſes, &c.

H. 7 E. 3. 10.

710 If a man ſeiſed of land in fee, doth leaſe the ſame land by indenture unto a ſtranger, yelding 5 l. by the yeare, and the indenture is, that if the Leſſee will hold over ten years to him, and his heirs, that he ſhall pay 20 pound by the year, and livery of ſeiſin is made unto the leſſee accordingly. In this caſe for the rent behind within the ten yeares, the leſſor ſhall have an action of debt, which proveth that the free-hold, and the fee are not in the leſſee before the ten years ended. But if when the ten years be paſt, and ended, the leſſee doth continue the poſſeſſion of the ſame land, and doth occupie the land by force of the indenture, then he hath fee, and ſhall pay 20 l. by the year as a rent-ſeck.

M. 40 E. 3. 27.

711 But if a man ſeiſed of lands, doth leaſe the ſame lands for life, yelding unto him a

Roſe

Rose for the first six years: and if he will hold the land over the six years, that he shall pay three marks by the year. In this case the lesse hath the free-hold presently, &c. And Gardian in Knights service may grant the wardship of the body and land, or any of them, upon condition. Tenant by Stat. merchant, and tenant by Elegit may grant their Estates, or parcel thereof upon condition, &c.

712 And Conditions may be annexed unto chattels personals, And therefore if a man selleth 20 Oxen, or other chattels moveables, or not moveables upon condition, that if the seller goeth unto Rome within one year then next following, that the Vendee shall pay unto him for the Oxen, or other chattels 20 l. or otherwise that he shall pay unto him but 40 s. for the Oxen, &c. this is good, &c. and the vendor shall not have the 20 l. &c. if he doth not perform the condition, &c. And a man may bail goods upon condition, &c.

713 As if a man contract with a Physician, or with a Chyrurgion, that if he shall cure such a one, and name him certain, of such a disease, & name the disease, that he shall have 10 l. the same is a good contract conditional. If a man selleth a house without the land, upon the which the house it is built for 20 l. to be paid when the vendor hath removed the house unto such a place at his own costs, and nameth the place, &c. The vendor shall not have the money before that he hath removed the house, according unto the condition, &c. M. 44 E. 3. 28.

714 And the retainer of a servant may be upon condition, &c. And know, that M. Littleton in his third book, Chapter of Estates, hath

hath shewed, what Conditions ought to be by deed, and what may be without deed, &c. And in the same Chapter he hath shewed divers, and many other good and necessary Cases concerning Conditions, &c.

615 And it is to know, that charters concerning inheritances may be delivered upon condition without deed, and yet they are not Chattels: The retainer of a servant according unto the Statute of Labourers upon condition is good without deed, &c. But a Rent cannot be granted for years upon condition, without an indenture, if the Grantor will take advantage of the condition, &c. The same law is of an Advowson in grosse, common in grosse, and of things which cannot passe without deed, &c.

M.6H.7.8. M.4 H.4. 34. 616 It hath been holden, that if a man doth enfeoff a stranger of land, and tenements, to re-infeoff him, and his heirs, and the feoffor dieth, and his heire doth require the feoffee M.7H.6.7. T.44 E.3. 22. to re-infeoff him, and he refuseth, for which the heire entreth, and the feoffee doth bring an action of Trespasse, that the heir shall plead this feoffment with the condition, without shewing the deed thereof, because it is in an action of trespasse, in which action free-hold is not to be recovered: But the law is contrary at this day; for if in an action of trespasse for breaking of his close, &c. the defendant pleads that the place where, &c. was his free-hold at the time. Now if the Plaintiff will conclude him so to plead, by reason of the feoffment of the Ancestor of the Defendant (whose heire he is) with warranty, &c. and rely upon the warranty, it behoveth him for to shew the deed thereof,

thereof, notwithstanding that it be in an action of trespasse, &c. But in many cases, divers persons unto whom a deed doth not appertain, shall take advantage of a condition, annexed unto the free-hold, and also of things which lie in grant without shewing the deed: And therefore a woman may demand her dower of a Rent-charge, or of a common in grosse which is certain, and without shewing the deed thereof, &c. 3 H. 6. 21. 44 E. 3. 27.

717 Now is to shew at what time Conditions ought to be annexed unto inheritances, free-holds, or other things to avoid and defeat the same. And as to that know, That when a thing executed shall be defeated, and made void by a condition, it behoveth that the condition be annexed unto the same thing, at the time of the executing thereof, otherwise as unto that purpose, it is not any thing worth. But it is otherwise of things executory, if not that it be in special cases, &c.

718 And therefore if there be a Disseisor of one acre of land, and the Disseisee doth release unto the Disseisor all his right by deed (as he ought) and afterwards it is covenanted between them by Indenture, that if the Disseisee payeth unto the Disseisor 4 l. before the Feast of Easter then next following, that then the release shall be void, and of no effect, &c. And the Disseisee doth pay the money according to the Indenture, yet the release is good, and effectual, and shall not be avoided by such covenant or condition, &c. because the release taketh effect before the condition or covenant doth begin. But it seemeth that by the payment of the money, &c. the Disseisor is 34 Ass. 1. 17 Ass. p. 2. 43 Ass. p. 12. H. 17 E. 3. 2.

seised

ſeiſed unto the uſe of the Diſſeiſée, &c. Tamen quære. But if ſuch Indentures and Releaſes had béen firſt delibered as the déeds of the parties ſimul & ſemel, then ſuch condition or covenant is good to avoid the releaſe. &c. And ſo ſhall it be, if ſuch condition had béen contained within the releaſe, if the releaſe be by déed indented. The ſame Law is of a releaſe which goeth, and doth enure by way of enlarging of an eſtate, and of a releaſe which doth enure by way of extinguiſhment of a rent or common, &c. or to determine a title of entry: And of feoffments, gifts, grants, leaſes, confirmations, &c. And of ſales, contracts, bargains,
21 H.7.24. and retainers, &c. Mutatis mutandis: But otherwiſe it is of things executories, if not that it be in ſpecial caſes, &c.

719 And therefore if a man doth enfeoff a ſtranger of certain land and tenements with warranty, and afterwards the Feoffée doth grant unto the Feoffor by déed, that if he be impleaded of the ſame land, &c. that then he will not vouch him by force of the ſame warranty, this is a good grant, becauſe the voucher is executory.

7 H. 4. 43. 720 If I be diſſeiſed of one acre of land, and my collateral Anceſtor doth releaſe unto the Diſſeiſor with warranty, and dieth without iſſue, and the warranty doth deſcend upon me, and afterwards the Diſſeiſor doth grant unto me by deed, that if he be impleaded, that he will not help himſelfe, nor take advantage by way of plea of this releaſe, nor of the warranty contained therein, the ſame is a good grant, becauſe it is made of a thing executory, &c.

721 And

721 And if a man ſeiſed of Lands and Tenements, doth leaſe the ſame lands, &c. unto a ſtranger for life, in this caſe the leſſee is puniſhable for waſte: But if the leſſor after the leaſe by a deed doth grant unto the leſſee that he ſhall not be puniſhed for waſte, it is a good grant, becauſe it is made of a thing executory: it appeareth how. The ſame law in all like caſes, &c. 9 H. 6. 5; 21 H. 7. 31; 42 E. 3. 24;

722 Now there are two manner of Conditions that is to ſay, Conditions in Deed, and Conditions in Law, of which M. Littleton hath ſpoken in his third book, in the Chapter of Eſtates, &c. But it is to know, That there are three manner of Condition in Fait, which are not good, viz. Conditions againſt the Law, Conditions repugnants, and Conditions impoſſible And know, that of eſtates made upon Conditions againſt the Law, the eſtates are good, and the Conditions are void, if the eſtates do not commence by the Conditions, for then both are void, viz. the eſtates, and alſo the Conditions, if not that it be in ſpecial caſes, &c. 4 E. 4. 16. H. 4. h. 7. 4;

723 And therefore if a man ſeiſed of Land doth thereof enfeoff a ſtranger, &c. or thereof doth make a gift in tail, or maketh a leaſe thereof unto a ſtranger, upon condition, that if the feoffor, donor, or leſſor kill *I. S.* who is an enemy unto our Lord the King, that then it ſhall be lawful for him to re-enter: the condition is void and the eſtate is good. The ſame Law is of a rent, common, and other things which lie in grant, &c.

724 If a feoffment, gift, grant leaſe, or, &c. be made upon condition, that if the Feoffor,

Donor, or Grantor, or Lessor burn the houses of I. K. that it shall be lawful for him to reenter, &c.

725 The same law is, if such condition be to be performed on the part of the Feoffee Donee Grantee, or Lessee, &c. But if a lease for life, or years be made of land upon condition, That if the Lessee kill I. S. within the terme, then he shall have and hold the land leased unto him, and his heirs for ever. Now notwithstanding that the lessee do kill I. S. within the terme, yet his estate is not enlarged thereby, because that the condition is against the Law, and the estate doth begin to be enlarged upon the performance of the condition: But notwithstanding such condition, yet the lease is good, because the same doth not begin by the condition, &c. But if an obligation be endorced expresly with such a condition against the law, the Obligation and also the Condition are void.

H.4.h.7.4. 8 E.4.13. P.2 E.4.3.

726 As if a man be bounden that he will keep the Obligee without damage, and doth not shew in what thing, such a condition is void, because he may have damage by doing of treason, murther, or felony, &c. which are things against the Law, and also it is against the Law to keep a man from damage for such things, and so the condition is void. But the Obligation is not void, because that such things are not expresly rehersed within the condition, and so it cannot be expresly said, that the will of the Obligee was, that the Obligor should save him harmlesse for such acts done against the Law.

9 Hen 4. Condition 6.

727 And it is to know, That if a gift in taile

taile be made of Land, &c. upon condition, that the donee shall discontinue the same land, &c. It is a void condition, because it is against the Statute of West. 2. cap. 1. De donis conditionalibus. &c.

728 If a feoffment be made unto I. S. of Land upon condition that he shall enfeoff thereof the Abbot of Westminster, the condition is good, because that the Feoffee may performe by leave of the King, and of the Lord, of whom the land is holden. Notwithstanding that the condition is Prima facie against the Statute of Mortmain, &c. And it is said that if a gift in tail be made upon condition, that the Donee may alien for the profit of his issue, that this is a good condition, notwithstanding that the Statute of West. 2. cap 2. De donis, &c. because that the Statute was made unto the benefit of the issue of the Donee, and this condition is for the benefit of the issue in tail. &c. H. 46 E. 3. 4. H. 8 H. 6. 24.

729 If a Lease for years be made upon condition, that if the lessor do alien the reversion within the terme that the lessee shall have for, and the lessor doth grant the reversion in fee unto a stranger by fine, the lessee not have fee upon this condition, for the free-hold, and the fee is in the conusee lawful before the lessee can take it by the condition, Tamen quære, if the lessor had granted the reversion unto a stranger by fine for life, whether the Lessee by force of the condition shall have fee, which is dependant upon the same estate for life: And it seemeth to some that he shall have it, because that when the Lessor hath granted the reversion unto a stranger for life, he hath alie- 6 R. 2. tit. 1.

ned it. And it ſéemeth to ſome, that the leſſée ſhall not have fée which is dependant upon the eſtate for life by ſuch grant, for they ſay that the condition ſhall be intended of an alienation made of the whole reverſion which was in the leſſor, &c. Ideo quære.

730 But if the condition were, that if the leſſor grant the reverſion unto a ſtranger in fée, that then the leſſor for years ſhall have fée, And the leſſor granteth the reverſion unto a ſtranger in fée by deed: In this caſe the leſſée ſhall have fée by the condition: And the reaſon is, becauſe that the reverſion is not in the Grantée before attornment, and yet the Feoffor hath granted the ſame, and againſt this grant, he cannot plead, that he did not grant it by the deed. But if the leſſée doth attorn unto the grant, then quære. If the leſſee ſhall have fée by the condition, becauſe he is the ſame perſon who ſhould take advantage of the condition. But it ſéemeth unto ſome perſons, that this attornment ſhall not take away his advantage by force of the condition, becauſe that the fée is in him by the condition before his attornment, for the attornment cannot be ſo ſoon don', but that there ſhall be an inſtance between the grant, and the attornment, and immediately after that the Leſſor hath delivered the deed of grant of the reverſion unto the Grantée as his deed, the fée is in the Leſſee by force of the condition, which ſhall not be deveſted out of him by attornment, if not, that it be by matter of concluſion, and the attornment is not any matter of concluſion unto him, &c. But alienare, idem eſt quod alienum facere: So that notwithſtanding that the leſſor

lessor hath granted the reversion by deed, yet it is not an alienation before attornment. Causa patet, &c. And if the condition be, that if the lessee be ousted within the Terme by his lessor, that then he shall have fee, if the lessor ouste him within the Term, he shall have fee. But quære, if the condition be, that if the lessee be put out by a stranger, &c. M. 21 H. 7. 21.

731 And it is to know, That Conditions are repugnants. As if a feoffment, or a gift in taile be made upon condition, that the feoffee, or donee shall not take the profit: Or upon condition that he shall not do waste, or upon condition that the wife of the feoffee shall not be endowed, these are void conditions, and the estate is good. And if a lease for life be made upon condition that the lessee shall not do fealty, it is a void condition. And if a man who hath nothing in black acre, granteth unto me a rent-charge issuing out of black acre, upon condition that by the grant, I shall not charge his person, it is a void condition, and so repugnant, &c. M. 21 H. 7. 10. M. 20 E. 4. 8.

732 But in the same case, if the Grantor at the time of the grant, had been seised of the same black acre in demesne, or in reversion, the condition had been good. If a lease for life of Land be made upon condition, that if the lessee be impleaded of the same Land, that he shall not vouch his lessor, It seemeth the same is a good condition, yet it is said it is not, because that the reversion in such case is the cause of the voucher, &c. And if a man seised of land in fee leaseth the same lands by indenture for years, rendring rent, provided always that the lessor shall not distrain for the Rent, T. 7 H. 6. 43.

it is a good condition, because that he may have an action of debt for the rent, &c.

733 If I. S. seised of land, doth lease the same land unto I. K. for terme of life, rendring rent, &c. And I. K. being seised of other land, doth lease the same land unto I. S for terme of life, upon condition, that if I. S. distrain for the rent reserved upon his lease, &c. that then it shall be lawful for I. K. to re-enter into the same land which he leased unto I. S. this is a good condition.

7 H. 6. 45 1
21 H. 6. 31.
21 H. 7. 11.

734 And if a man doth enfeoff a stranger with warranty, provided that the Feoffee nor his heirs shall have nothing in value by force of the warranty, it is a good condition, because that notwithstanding that, the Feoffee may take advantage of this warranty by way of rebutter, &c. And if a gift in tail, or a lease for life, or a lease for years be made upon condition, That the donee or lessee shall not grant their estates, nor any part of their estates unto any other person or persons, the same is a good condition, by reason of the reversion which remaineth in the donor, or lessor, &c.

735 Now is to speak of Conditions impossible; and as to that know, that an impossible condition is void: But if such a condition be in making of an estate, the estate shall remain good, but estates shall not be enlarged by Conditions impossibles. And if an Obligation be endorsed with a condition impossible, the Obligation is good, and the condition is void. And therefore if a man seised of lands in fee, doth thereof enfeoff a stranger upon condition, that if the Feoffee doe not go out of

4 H. 7. 4.

England

England unto the Church of S. Peter in Rome, and return again into England within three days next following the feoffment, that it shall be lawfull for the feoffor to re-enter, the condition is void, because it is impossible, and yet the estate is good, &c. 14 H. 8. 35.

736 But if a lease for life be made upon such condition, &c. that then the Lessee shall have fee in the Land, his estate cannot be enlarged by such a condition, because the estate doth not begin to begin to be enlarged, but by the condition performed, and the same is impossible to be performed, &c. And if I. S. be bound unto T. R. in an obligatiõ of 20 l. upon condition that if the Obligor go Ad terram sanctam out of England in one day next ensuing the date of the Obligation, and return the same day into England, &c. This Obligation is good, and the condition is void, Cauſa patet.

737 If a man be bound in an Obligation upon condition, to be performed in France, the condition is void. But if it can be tried, it is good enough, notwithstanding that it be performed in France, As in the time of War, divers things are done beyond the Seas which shall be tried by the certificate of the Marshal of the Kings hoast, &c.

738 If a lease for years be made of a wood by deed indented: and it is covenanted in the deed, That the lessee shall leave the wood in as good plight as it was at the time of the lease made, and during the terme the wood is destroyed by a sudden tempest: And at the end of the terme the lessor shall not have an action of Covenant for the not performing of this P. 14 H. 8. 32.

covenant, for it is not possible for the Lessee to perform the same: But if such a covenant be made upon the lease of a house, & the house be thrown down during the term, the Lessor after the end of the terme shall have an action of Covenant for the not performing of the covenant, Causa patet: But in such case the Lessee shall not be charged in an action of waste, &c.

739 And as to the words which of themselves make estates upon conditions, &c. And of the making of feoffments in mortgage upon condition on the part of the feoffor, or on the part of the feoffee, and where the feoffor or feoffee ought to demand the money, &c. And where it behoveth him who ought to perform the condition, to seeke him to whom the condition ought to be performed: And by what persons, and to what persons the condition ought to be performed, with divers other good and necessary matters appertaining unto conditions, Master Littleton who was an Honourable Sage of the Law, hath made a good and necessary declaration thereof in his Chapter of Estates upon Condition, &c.

740 And it is to know, That if the words of a condition be, Et pro solutione dict. &c. that it shall be lawful for the Feoffor, and his heirs to take back the Tenements, and to make his profit of them, by these words the Feoffor, and his heirs may re-enter for not payment, &c. The same Law is, if the words of the condition be, Et pro non solutione, that the Feoffor, and his heires may Recipere the lands, for they cannot be otherwise intended, notwith-

notwithstanding that the word Recipere implyeth a livery to be made of the Tenements, &c. Quære, if the words of the condition be, that the Lessor and his heirs, Pro non solutione, &c. may retain the lands, &c. how the words of the condition shall be taken, whether according to the intendment which the Law maketh of the condition, or according to their signification,

741 And therefore if I be enfeoffed of land upon condition, that I shall give all my goods (Si quæ fuerint) in this case this word (fuerint) shall be taken in the present tence, and not in the future tence, because by the Law it cannot be otherwise intended: For a man cannot give goods in which he hath no property. And if a man be enfeoffed upon condition, that he shall give all the pikes in his pond (si quæ fuerint) in this case (fuerint) shall be taken in the present tense.

742 If a feoffment in fee be made upon condition, that all the Doctors in Pauls (si quæ fuerint) shall be at such a place such a day (fuerint) shall be taken in the present tense, &c. And the common making of Charters is in the perfect tense, viz. by Dedi & Concessi: and yet they shall be taken in the Present tense. If a man be enfeoffed upon condition that he shall be Non-suit in all his Actions in the Common Pleas (si quæ fuerint) (fuerint) shall be taken in the Present tence: But if a man be enfeoffed upon condition, that hee shall give all his goods in London unto I. S. (si quæ fuerint) in this case (fuerint) shall be taken for the time past; For hee may have goods which were in London, but now are not here. 57 H. 6. 16.

745 If

743 If a man be bound in 20 l. &c. that I. Et omnes alii si qui fuerint feoffati ad usum dict. I. de manerio de B. relaxaver. totum jus suum quod habent, &c. Cuidam T. F. filio suo, & hæred. dict. I. F. Et scriptum illud sigillo suo signa-
8 Ass. p. 5. ad P. T. ad usum dict. T. F. citra tale festum deliberaver. quod tunc. &c. Now this word (Fuerint) shall be taken for the time past, and shall be intended that those who were his feoffee shall release, for it may be he had feoffed who were disseised, and yet they had right according to the words following, viz. totum jus quod habent, and the intent of the condition was, that the release should be good and profitable, &c.

744 If a man make a feoffment reserving rent, &c. and Pro non solutione, &c. that the feoffee and his heires may re-enter. Now by these words they shall re-enter: for the word (may) doth imply liberty in the parties to whom it doth extend: If the words be, that the feoffee and his heirs (pojent) solvere, &c. and pro non solutione, &c. That it shall be lawful for the feoffor, and his heirs to re-enter; yet the feoffee for and his heirs shall not re-enter Pro non solutione. Causa patet.

12 Ass. p. 5. 745 If a lease be made for life upon condition, that if the Lessor or his heirs pay unto B. or his heirs 10 l. at such a day, that it shall be lawful for the Lessor, and his heirs to re-enter, & if they do not pay it within the time and the Lessee pay unto the Lessor, or his heirs 10 l. at such a day, which is after the day of payment, which ought to be by the Lessor & his heires, that then the Lessee shall have and hold the land to him, and his heirs for ever.

ver: And the Lessor nor his heirs do not pay the money, &c. nor doth the Lessee pay, &c. yet the Lessee shall hold the land during his terme.

746 If a feoffment be made upon condition, that if the Feoffor pay 10 l. unto the Feoffee, and goeth unto Rome before such a day, that it shall be lawful for the Feoffor, and his heirs to re-enter; If he pay the 10 l. before the day, and doth not go to Rome before the day, he shall not enter, because the condition is by the word (Et) which is a copulative; But otherwise it shall be, if the condition be by this word (vel) because that is in the disjunctive, &c. M.14 H.8. 17.

747 Now is to shew, how, and in what manner a condition in fait shall be performed, &c. And as to that, there is a difference when the condition is to be performed to the party, and when it is to be performed unto a stranger, &c. When it is to be performed between the parties, it is not requisite that the condition be performed in all things as is expressed, if the parties assent thereunto, &c. But if the condition be to be performed unto a stranger, it ought to be performed according unto the words of the condition in all effectuall points, if not, that it bee in speciall cases. H.4. h.7.4

748 And therefore if I be bounden unto I. S. in 20 l. to pay him 10 l. at a certain day, and in a place certain: If I pay him the 10 l. before the day, &c. and at another place, and the Obligee do accept thereof, the condition is performed. But in the same case; If I pay unto the Obligee the 10 l. after the day of payment, M.41 E.3. 20. H 43 E3.3. 17 Ass.p.2. T. 9 E.4. 21.

payment, and the Obligée do accept thereof, yet the condition is not performed. And
2 E. 4. 3. when a man is bounden in a greater sum to
M 19 E. 4. 1. pay a lesser sum at a place certain, the Obligée is not bounden to accept of the sum at ano-
T. 9 E. 4. 23. ther place then is appointed in the condition: But yet if he do accept of the same at another place, it is good, &c. If I. S. be bounden in
M. 20 E. 4. 24. 20 l. to T. K. to pay him 10 l. And T. K. is in-
M. 31 H. 6. 11. debted unto a stranger in ten pound: And the other Obligor by the commandment of the Obligée paieth the 10 l. unto the Creditor of
H. 27. H. 6. 10. the Obligée in allowance of the 10 l. compri-
H. 9. H. 7. 18. sed in the condition; the same is a good performance of the condition. And in the same
T. 22 E. 4. 3. case in an action of debt brought by the obligor against the Obligée, the Obligée may make his defence, and pray auditum, &c. and plead that he paid the 10 l. unto the Obligée, by the hands of the creditor of the Obligée, &c.

749 If a man be bounden in 100 l. to pay 100 marks unto the Obligée, &c. and the Obligée accept of 10 l. of the Obligor in satisfaction of the 100 marks, it is a good performance of the condition, and yet some have said the contrary, because that 10 l. cannot be satisfaction for 100 marks, &c. But that is not material in his case, because the Obligee is content therewith, &c. And if the Obligé hath received a horse, or a gold or silver ring, or a quarter of wheat, or a cup, &c. of the Obligor in satisfactiõ for ℔ 100 marks, it is a good performance of the condition, of what value soever the horse, or, &c. be. But if I. S. be
H. 3. h. 7. 4. bounden unto T. K. in two hundred pound to
H. 9. h. 7. 8. enfeoff I. K. of the Manor of Dale, and the Obligor

Obligor doth enfeoff T. K. of the Manor of S l in allowance of the Manor of Dale, and he accept thereof, yet the condition is not performed, because when the condition is to be performed of a thing not comprised within the Obligation, it ought to be performed of the same thing comprised in the condition, if not that it be in special cases.

750 And therefore if a man be bounden in a hundred marks to make a Recognisance of thirty nine pound unto the Obligee in the Common Pleas at quindena St. Hill. before, &c. And the Obligor doth pay 10 l. unto the Obligee for satisfaction of the condition, this is no performance of the condition, Tamen quære, because some have said That the Recognisance is not to be made but for the assurance of 39 pound, the which 39 pound cannot be intended of a thing without the Obligation.

751 But if the condition of the bond be, ỹ if the Obligor make a sure, sufficient, and lawful estate of and in 20 s. rent issing out of his Manor of Dale unto the Obligee and his heirs, To have and perceive the same 20 s. rent to him, and his heirs, with clause of distresse, that then, &c. And the Obligor doth grant unto the Obligée one annuity of 20 shillings for 6 years, that is no performance of the condition: The same Law is, if the Obligor had leased the Manor of Dale unto a stranger for years, or for life, in allowance of the grant of rent, according to the condition of the Obligation. H. 37. H. 6. 26. And if a man be bounden unto I. S. in 100 l. to grant unto him the rent and farm of such a Mill, &c. if the Rent bee granted unto

unto the Obligée to take effect in him by way of retainer, the condition is perfozmed. Causa patet.

752 But if a man be bounden in 100 l. to make a Recognisance of 40 l. befoze such Justices, and nameth them, at a certain day, &c. and with the assent of the Obligee, the Obligoz doth lease a house unto him foz the term of his life in satisfaction thereof, this is no perfozmance of the condition.

753 If I be bounden in 20 l. &c. to deliver ten quarters of wheat, oz four Hozses, oz ten Oxen, oz fozty Sheep, and I with the assent of the Obligee pay unto him 5 l. in satisfaction thereof, the condition is not perfozmed; Tamen quære, &c.

H. 9 H. 7. 18.
M. 33 H. 6. 24.

754 And it is to know, that if the Obligée be party oz privy unto any act done, by which act the condition cannot be perfozmed, then the Obligoz shall be discharged of the Obligation, if not that it be in special cases. As put case, I. S. is bounden in 100 l to T. K. Abbot of Westminster, &c. to enfeoff C. D. of the Manoz of Dale befoze such a day, &c. And befoze the day C. D. is a Monk profesled under the obedience of the same Abbot who is the Obligee; in this case the Obligoz is discharged of the Obligation: But Quære, if C. D. be deceased befoze the day the feoffment be to be made, whether I. S. be bounden to enfeoff him oz not. But if the condition be to be perfozmed unto a stranger, and it may lawfully and possibly be done: And the Obligée be no party noz privy to any act done, by which act the condition ought to be perfozmed, then such condition ought to be perfozmed in all things as

11 Ass p. 2.

as it is, if not, that it be in ſpecial caſes.

755 And therefore if I. S. be bounden unto me in 10 l. to pay unto T. K. ten marks before ſuch a day, at ſuch a place, &c. And before the day the Obligor doth give unto T. K. a Horſe in ſatisfaction for the ten marks, and T. K. doth accept thereof, yet the ſame is no performance of the condition, for a ſtranger by his act without my aſſent ſhall not take away my duty, &c. The ſame Law is, if the Obligor had paid the ten marks before the day, at another place then is compriſed in the condition. So ſhall it be, if there be a day appointed certain in which the payment ought to be, and I. K. do receive it at another day, &c. 36 H. 6. 9.

756 And if a man be bounden unto I. S. in 100 l. to marry his daughter before ſuch a day certain, notwithſtanding the Obligor before the day often tender unto the daughter to marry her, and ſhe refuſeth, ſo as the Obligor cannot perform the condition, the Obligation is forfeited, becauſe the condition was lawful, and poſſible to be done, and is to be done unto a ſtranger, and the Obligee did not do any thing whereby it might not be performed. The ſame Law is, if I be bounden unto C. D. in 20 l. that T. ſhall enfeoff I. S. of black acre before ſuch a day certain, and T. doth not enfeoff I. S. before the day of black acre, I have forfeited my bond, becauſe that by the condition I have taken upon me that ſuch feoffment ſhall be made. 4 H. 7. 3. 33 H. 6. 18. 20 E. 4. 2. 30 H. 6. 12.

757 And if I be bounden to T. D. in 10 l. to enfeoff Alice Stile of the Manor of Dale before the Feaſt of Eaſter, and before the condition performed, and before the day I marry

Alice

Alice Stile, and the marriage doth continue till the day be past, the Obligation is forfeit, and notwithstanding that before the Feast of Easter, I do enfeoff a stranger of the Manor of Dale, for to enfeoff my wife, and he doth so, yet I have forfeited my Obligation.

P.2 E.4.3. 758 But if I be bound in 20 l. unto T. K. to appear before the Justices of the Common Pleas Octabis Michaelis, to answer to such a one in an action there brought against me, &c. and at the day, I come into Court and appear, and the Plaintiff is essoined, so that I cannot answer unto him, in this case my bond is saved: But if I be bounden unto T. K. in four l. to ride with I. C. such a day unto Dale, and I. C. will not ride that day, I have forfeited my bond, &c. But if I be bound unto

P.2 E.4.7. M.8 E.4.25 B in ten pound unto the use of T. to enfeoff T. alone of the Manor of Dale, &c. And I do all that lieth in me for to enfeoff him, and he will not be enfeoffed thereof, my bond is saved, Causa patet.

759 If a man be bound in 20 l. unto I. S. upon condition that the Obligée shall enfeoff a stranger of the Manor of Dale before such a day, &c. And the Obligée will not enfeoff the stranger, &c. the bond is forfeited, notwithstanding that he, viz. the Obligee is the impediment that the condition cannot be performed because that the obligor took upon him by the words of the condition, that the Obligee should so do. But if the words of the condition had bene, if the Obliges do enfeoff a stranger, &c. and the stranger doth require the Obligee for to enfeoff him, and he refuseth so to do, the Obligation is not forfeited.

M.22 E.4. 15. 17 E. 4. 5. 9 H. 7. 20. 29 H. 6. 11.

760 I

760 If a man be taken upon a Capiat, and findeth sureties by bond to appear Octabis Trin. And the Sheriff returneth the Writ at the day, and the same day a Writ of adjournment is directed unto the Justices to adjourn the Court until Quindena Michaelis, and the Obligor cometh, and sheweth unto the Court, how that he was bound for to appeare at the same day, and prayeth that they would record his appearance, and the Justices will not record his appearance, but bid him keep his day at Quindena Michaelis, the bond is not forfeited, in so much as if he appear at Quindena Michaelis, by this appearance he shall save his bond. And if in the same case the action had been discontinued, by the devise of the King before Octab. Trin. and the Obligor had not appeared, Octabis Trin. yet the bond had not been forfeited. M.31 H.6. 19. M.38 H.6.

761 But if I. S. be bounden unto T. K. that G. F. shall appear Octa. St. Trin. in the common Pleas, in an action of debt brought by the said T. K. against the said G. F. returnable at ỹ same day, and G. F. do appeare the same day, and his appearance is not recorded, The bond is forfeited. But in the same case G. F. dieth before Octabis Trin. the bond is saved, because the condition is become impossible by the act of God. 3. H. 15.h.7. T. 9 E. 4. 25.

762 And in the same case, in an action of debt brought upon the obligation, it is no plea for the Defendant to say ỹ the Writ was not returned, if so be that he that ought to appear hath day by the Roll: But it is a good plea to say that he who was to appear was impriſoned at Dale, within the County of Middlesex by 31 H. 6. burre 60. T. 9 E. 4. 2.

by the Plaintiff, or at his suit, before the day of the return of the Writ, and continued there in prison until the day of the return of the Writ was past, &c. And the reason is, because he himself is the cause that the condition cannot be performed.

763 If a single woman seised of land in fee, doth by deed indented thereof enfeoff a stranger, reserving Rent unto her, and her heirs, the Rent payable yearly at the feast of Easter. Et si contingat redditum prædict. à retro fore in parte vel in toto non solvit, quod donque bene licet, to the feoffor, and his heirs to re-enter, and the feoffor and the feoffee do enter-marry, and the marriage doth continue between them for divers years, &c. yet the condition is not broken, because that during the marriage betwixt them, the rent is in suspense, and the cause of the suspension is, that the woman was a party to the same by her agreement, and during the time that the rent is in suspence, it ought not to be paid, &c.

764 But in the same case, if the feoffment had been made upon condition to pay 10 l. unto the woman who is the feoffor at the feast of Easter, &c. And afterwards the feoffor and the feoffee do enter-marry before the payment of the money, and before the day of payment, and during the marriage the day doth passe, the condition is performed, because that the money is but a sum in grosse, and a duty, so as it shall be presently extinguished in the Husband, because it is but a personal duty, in so much, as if the woman had made a feoffment unto a stranger before the marriage upon such a condition, and the husband during the marriage,

riage and before the day of payment, releaseth all manner of conditions, duties, and demands unto the feoffee: By this release the condition, and the duty is extinct, and determined. But if the husband releaseth all entries, and demands unto the feoffee after the day of payment, if the Wife survive her Husband, she may enter for the condition broken, notwithstanding her husbands release, and the reason is, because the condition was broken before the release, at what time the Wife had title of entry into the Lands, and Tenements, which title of entry may descend unto her heir, &c.

765 But if a single woman seised of land, do thereof enfeoff a stranger by deed indented, upon condition that the feoffee shall enfeoff the woman of black acre before the feast of Easter, &c. And before the Feast of Easter, and before the condition be performed, the feoffor and the feoffee do enter-marry; and during the marriage, the day before which the condition ought to be performed passeth. Quere, whether the condition be performed or broken: and if the condition be broken, the Husband is presently seised of the same Land, in the right of the Wife, &c.

766 And if a man doth enfeoff me by deed indented, upon condition that I shall pay unto him 10 l. at the feast of Easter. And the feoffor maketh me his Executor. & entreth into Religion, and is professed before the condition performed, and before the day wherein it ought to be performed and continueth in Religion untill the day be past, and afterwards he is deraigned; yet I shall keep the Land for ever, &c.

767 If a man be bounden unto me in 100 pound, to enfeoff me of the Manor of Dale before such a day; and before the day the Obligor doth enter into Religion, and afterwards the Obligee doth enter into Religion, and the day doth come, and then both of us are de-raigned. It seemeth that the Obligation is forfeited, because there was a time for the Obligor to tender the money, and because the Obligor at the first hath disabled himselfe, and all times after, till the day before which the condition ought to be performed incurred, he remaineth to perform the condition and the condition is for his advantage, and he ought to do the first act, in so much as if the Obligor be not ready upon the Land nor other for him to make the feoffment, and the Obligee doth not come thither, nor any for him, yet the bond is forfeited, for in such case, in an action of debt brought upon the Obligation, the issue shall be, whether the Obligor were ready upon the land, to make the feoffment, or not, &c.

768 And if a man be bounden unto me in 200 pound to pay unto me 12 l. at Pauls such a day, at which day the Obligor, nor any for him come thither, the Bond is forfeited, because the Obligor ought to do the first act, and therefore ought to bee there ready, &c. For if in an Action of Debt brought upon the Obligation against the Obligor, &c. he sheweth the condition, and that he was ready at Pauls according to the condition, and that the Plaintiff, nor any for him was there to receive the money: The Plaintiff may say that he was there ready to receive the money,

without

without that, that the Obligor was ready there to pay the same, &c. But if the Obligée be disabled to take according to the condition, it behoveth not the Obligor to tender the performance thereof unto him, if not that it be in special cases.

769 And therefore, if I be bounden unto a single woman in 100 l. upon condition that if I do marry her before such a day, that then, &c. And before the day the woman taketh a stranger to be her Husband, and the marriage between them doth continue untill the day be past: In that case I am not bounden for to tender the performance of the condition unto her, because she was not of ability for to receive the same, &c.

770 And if I be bounden in twenty pound upon condition, That if I do enfeoff the Obligée of black acre before such a day, that then, &c. And before the condition performed, and before the day, &c. the Obligée doth enter in Religion, and is professed, and continueth professed untill he doth come. In this case it behoveth not that I. be ready upon the Land to make the feoffment, &c.

771 If a man be bounden in 100 pound unto A. S. upon condition, that if the Obligor doth marry her before such a day, that then, &c. And before the day the Obligée, &c. is a Nun professed, and after, before the day, the Obligor is a Fryar professed, and then the day doth come the Obligor and the Obligée being both professed in Religion, and afterwards they are both deraigned, the obligation is not forfeited. The same law is, if they both are disabled at one and the same time, &c.

772 But know, That sometimes the first Act as unto the performance of the condition, ought to be done by the Obligee, otherwise the Obligor is not bounden to perform the condition. As if a man be bounden unto me in 10 l. That I. S. shall serve me in omnibus mandatis licitis & honestis for a whole year certain. In this case, if I do not command I. S. to serve me, by reason whereof he doth not do me service, the Obligation is not forfeited. But if the condition were, that I. S. shall be a good and faithful servant unto the Obligee for a whole year certain: It behoveth that in this case I. S. tender his service unto the Obligee, notwithstanding that he doth not command him any service, otherwise the Obligation is forfeited. But if in such case I. S tendereth his service unto the Obligee, and he refuseth to have any service from him, the Obligation is not forfeited, &c. 6 E. 4. 1.

773 If a man be bounden in 20 l. unto I. S. upon condition, That if the Obligor goeth unto Rome with the Obligee at the request of the Obligee, That then, &c. In this case the Obligor is not bounden to go unto Rome with the Obligee, but at his request, &c. If one be bounden unto me in 20 l. That at what time soever that I shall come unto the Town of Dale, that it shall be lawful for me to enter into the house of the Obligor there, and if the Obligor do not suffer me to continue for three dayes, and three nights there, that the Obligation shall stand, or otherwise shall be void. Now if the Obligor see me coming unto his house, shut up the doors, and goeth unto another place, so as I cannot enter, the Obligation 11 H. 4. 9.

ligation is not forfeited, for in this case the Obligee ought first to enter, &c.

774 If a Parson of a Church be bounden in 100 l. unto an Abbot, that if within a certain time he will resigne his Benefice for a pension as shall be agreed betwixt them, that then, &c. And they agree that the Parson shall have a pension of 4 pound. In this case it behoveth the Abbot to tender to the Parson a sufficient deed of the pension, otherwise the Parson is not tied by this Obligation, and Condition, for to resigne. And so in diverse Cases the first act ought to be done by the Obligee. And sometimes the first act concerning the condition of an Obligation ought to be done by a stranger, &c.

775 And therefore if I be bounden unto I. S. in 100 l. to stand to the arbitrement, and judgement, &c. of T. K. and D. C. and they make no award, the Obligation cannot be forfeited, &c. And if a man be bounden unto me in 100 l. to make a sufficient and lawful estate by the advice of I. D. &c. If I. D. do not give any advice, and the Obligor doth not make any estate, &c. the Obligation is not forfeited. And if I. D. doth give advice, and the Obligor doth make estate accordingly, the condition is performed, whether the estate be sufficient, or not, or lawful, or not, &c. 7 E. 4. 13.

776 But if a man be bounden in 100 l. that if he shall make unto the Obligee a sure, sufficient, and lawful estate in fee in certain Lands by a day certain. That then, &c. In this Case the Estate ought to be sure, sufficient, and lawful, otherwise the Obligation is forfeited.

777 If a man be bounden in 100 l. to make as ſure, &c. an eſtate unto the Obligee as ſhall be deviſed by the Council learned in the Law of the Obligee, &c. In this caſe the Council of the Obligee are to adviſe the eſtate, and notice thereof ought to be given unto the Obligor, otherwiſe he is not bounden to perform it, &c. And it is ſaid, if in the ſame caſe, the obligee hath four men learned in the Law of his Council, and two of them give advice, and the other two give no advice, The obligor, in an Action of Debt brought againſt him upon the obligation, may plead Quod Concilium of the Plaintiff, non dedit adviſamentum. For the adviſe in ſuch Caſe ought to be given by all the Counſellors learned in the Laws, &c. As if the condition were, That the obligee, &c. make ſuch eſtate as the Juſtices of the Bench ſhall adviſe, and there are four juſtices, and two of them give advice, and two give no advice, the obligor is not bounden by ſuch advice. Tamen quære.

778 But it is to know, That if a man be bounden in 100 pound unto J. S to enfeoff the obligee ſuch a day of the Manor of Dale, &c. it behoveth the obligor in this caſe to be ready upon the Land, to make the feoffment at the laſt inſtance of the day appointed, &c. without any requeſt made by the obligee. And in the ſame caſe the obligor needeth not give notice thereof unto the obligee, Cauſa patet.

779 But if a man be bounden unto me in 20 l. to enfeoff J. S. alone of the Manor of Dale before ſuch a day, in this caſe the obligor ought to make the feoffment unto J. S. at his

his peril, otherwise the Bond is forfeited: But if I do enfeoff I. S. upon condition, that he shall re-infeoff me, in this case I ought to make request to the Feoffee, otherwise the feoffee is not tied to re-infeoff me. But if the feoffment be made of certain Land upon condition, to enfeoff a stranger of the same land, it behoveth the feoffee in this case to make a tender of the feoffment unto the stranger to whom it is to be performed, &c. 2 H. 7. 3. 3 E. 4. 1.

780 And if a man grant unto me an annuity payable at a certain day, and no place is limited where it shall be paid, and the Grantor is bound unto me in 20 l. that he shall pay unto mee the annuity at every day that it ought to be paid: it behoveth the grantor to seek me in what place soever I am, if I be (Infra quatuor Maria) to pay unto me the annuity, and that is to save the forfeiture of his Obligation: For the Grantor was not bounden unto me to pay the annuity, by reason of the grant, without request, &c. But if the Obligor at the day in which, &c. tendereth unto me the annuity, and prayeth me to make an acquittance unto him, and I will not make acquittance unto him, by reason whereof he doth not pay unto me the annuity; yet he hath not forfeited his Obligation, &c.

781 And if a man be bounden unto me in 20 pound to pay unto me a lesser sum at such a day, and doth not appoint any place where the payment shall be, The Obligor ought to seeke mee, &c. and to tender the lesser summe, according unto the Condition, &c.

782 If a man be [bounden] in 20 pound to stand

ſtand unto the award of I. S. &c. and I. S maketh an award which is void, yet the Obligor ought to perform the ſame for to ſave the forfeiture of this Bond, if the award be not impoſſible, or againſt the Law, as to kill a Man, or a Woman, or to burn Houſes, or to
19 H. 6. 36. ſteale Goods, or any ſuch like thing, &c. But
33 H. 6. 2. the Obligor is not chargeable in an action, upon an arbitrement, which is void: And in the ſame caſe, if I. S. hath awarded that the Obligor pay unto the Obligee 20 s. before the Feaſt of Eaſter, and the Obligor before the ſaid Feaſt tendereth the 20 s. unto the Obligee, and he refuſeth the ſame, and bringeth an action of debt againſt the Obligor upon the bond, &c. he may plead the condition, and the award, and ſay, that he tendred unto the Obligee the 20 s. accordingly, and that he refuſed the ſame, &c. without tendring the 20 s. in Court, becauſe the Obligee might have an action of debt upon the arbitrement for the
7 E. 4. 3. 20 s. and alſo becauſe that the 20 s. was not a
20 E. 4. 1. duty to the Obligee before the arbitrement,
22 E. 4. 25. &c.

782 If a man be bounden in 20 l. to pay 10 l. at a certain day, and the Obligor doth tender the money unto the Obligee accordingly, and he refuſeth the ſame, yet in an action of debt brought upon the Obligation againſt the Obligor, it behoveth the Obligor to plead the condition, and the tender, and the refuſal, and ſay, that he is yet ready to pay the 10 l. and tender the ſame in Court, becauſe it was a duty before the Obligation and the Obligor is not thereof clearly diſcharged by the Obligee, but he is bounden by the

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Obligation to pay the ſame upon a paine of forfeiture of a greater ſum, and the Obligee cannot have an action to demand the ſame, but upon the Obligation. The ſame Law is, notwithſtanding the leſſer ſum were payable at a place certain &c.

784 But the condition of the Obligation be of matter without the Obligation, &c. As to enteoffe the Obligee, or to give unto him a Horſe, a Gown, a Hawk, a Knife, a pair of Spurs, a Launce, or a Cap, &c. at a day certain, or any other thing which is not parcel of the duty comprized in the Obligation, if the Obligee doth refuſe any ſuch thing, &c. In an action of Debt brought upon the Obligation, the Obligor ſhall plead the condition, and the tender and refuſal; but ſhall not need to ſay, that he is yet ready, &c. But it is ſaid by ſome, That if the condition of the bond be of a Horſe, which Horſe was due unto the Obligee before the bond made, by reaſon of a ſale thereof made by the Obligor unto the Obligee, or other perhaps that the Horſe was delivered by the Obligee unto the Obligor for a certain time, &c. Or by other means perhaps the horſe is due to the obligee by the obligor, &c. Notwithſtanding that in ſuch caſe the Obligee doth refuſe the Horſe, when it is tendred unto him, according unto the condition of the bond, ſo as by that the ſum comprized in the condition of the bond is not forfeited, yet the Obligee ſhall have an action for the Horſe as the caſe is. But I conceive the Law to be contrary, becauſe the Obligee hath bond for the ſame Horſe, if not, that the horſe were firſt delivered by a matter in writing, &c. T. 18 E. 4. 9. H. 7 E 4.4. M. 47 E. 3. 29.

And

M. 8 E. 4. 22. And the same Law is, of all other the like things, &c. Mutatis mutandis.

785 If a man be bounden in ten l. to deliver unto the Obligee twenty quarters of Wheat at a certain day, and it is not appointed in what place they shall be delivered, the Obligor is not bounden to carry the Wheat with him unto every place, but it sufficeth him to say unto the Obligee, Sir, your Wheat is ready for you, where you will have it to be brought unto you: And if the Obligée will not appoint unto the Obligor a place where the Wheat shall be brought, the Bond is saved, &c. And if the Obligor at the day bring the wheat unto the house of the Obligée, and say unto the obligée, Sir, I have brought unto you your Wheat according to the condition of the bond, I pray you receive it, and he saith unto him, that he will not receive it there, but he will receive it at another place, and the Obligor will not carry the same unto the other place, Yet the bond is saved. And in an action of Debt brought against the Obligor upon the bond, he may plead the condition, and the special matter, and not tender the Wheat in Court, &c. And it is to know, that if any thing be compriſed in the condition of a bond, & it is not limited what person ought to do the same, then the Obligor or Obligée, viz. He who hath the most skill ought to do the same: But if neither the Obligor, nor the Obligée have knowledge to do the same, or if either of them hath several skill, &c. Then it shall be done by the Obligor, if not that it be in special cases, because that the condition of the bond is for the advantage of the Obligor.

786 And

786 And therefore if a Taylor be bounden unto me, &c. upon condition, That if I bring unto his Shop three ells of Cloth, which shall be cut out, and if the Taylor make me a Gowne thereof, that then, &c. And it is not appointed in the condition who shall cut out the Gown, therefore it shall be taken, that he who hath most skill to do it shall do the same, which is the Obligor, &c. And if the Condition were, That if the Obligee bring three ells of Cloth unto the Shop of the Obligor, which shall bee measured, and it is not appointed by whom it shall be measured, then they shall be measured by the Obligor, Causa patet, &c. 9 E. 4. 13.

787 Now is to shew at what time conditions shall be performed, if no time bee appointed for the performance thereof: And as unto that, Know; That if the conditions be to be done onely for the profit, and benefit of a stranger, Then it behoveth that they be done, and performed within convenient time, if not that it be in speciall Cases. T. 15 E. 4. 23. M. 33 H. 6. 54.

788 And therefore if a man be enfeoffed of Land, upon condition that he shall marry the Daughter of the Feoffor, and no time is limited when, nor within what time it ought to be done, the Feoffee ought to perform the same in convenient time, because that the Daughter of the Feoffor is to have benefit, and profit by the performance of the condition, viz. Advancement, for it cannot be intended that the feoffment was made unto any other intent, &c.

789 If a man be enfeoffed upon condition, that

that the Feoffee shall enfeoff a stranger, it behoveth the Feoffor for to tender the feoffment unto the stranger within convenient time, &c. But if a man be bounden in 10 l. unto I S. to pay 4 l. unto a stranger, and it is not appointed when the 4 l. shall be paid: if the Obligor pay it unto the stranger at any time during their lives, the bond is saved. And the reason is, because that the condition of the bond is for the benefit, and profit of the Obligor. The same Law is, if the condition of the bond be, That the Obligor shall enfeoff a stranger of &c. and no time is appointed when the feoffment shall be made, &c.

M.21 H.6. 10. P.4 H.7. 6. 790 And notwithstanding, that it be commonly said, That the condition of an Obligation shall be alwayes taken for the benefit, and advantage of the Obligor: Yet if a man be bounden upon condition, That if he or his Feoffees of his Manor of Dale, grant unto the Obligee 20 shillings Rent for the Terme of life issuing out of the same Manor, before such a day certain, That then, &c. And the Obligor hath three Feoffees of his Manor of Dale, and two of his Feoffees grant the Rent unto the Obligee, this is no performance of the condition: And yet the feoffees of the Obligor have granted the Rent: But by these words (his Feoffees) shall be intended all his Feoffees, &c.

791 If a man be bounden, &c. upon condition, That if the Obligor sufficiently prove that it was the Will of C. D that T. K. should make an estate unto the Obligor of Land in fee, &c. That then, &c. In this case, it is most for the benefit, and advantage of the Obligee

to make proof by witnesses before some honest men in the Countrey, and yet the proofe ought to be made by an enquest, for the most sufficient proof in Law is by a Jury. And the condition doth not mention in what manner the proof shall be made, nor before what person but saith only that it shal be sufficiently proved. And therefore the Law shall say, That it shall be proved by the most sufficient proof, which is by Enquest: but if the words of the condition are, That he shall make the proof before such a one, &c. which are not Justices &c. Then the proof shall not be made by Jury. Or if the condition be, That if it be proved sufficiently before such a day, &c. before A. B. and C. D. Justices of our Soveraign Lord the King, and indeed they are Justices of Peace, or Quorum, and not Justices of the one Bench, or the other, nor Barons of the Exchequer, nor any such Justices which may make a tryal by Jury, then the proof shall not be by Jury, if not, that the proof be to be made by indictment. And notwithstanding that the proof be to be of such a thing as may be tryed by Jury, yet if the proof be to be made at such a time, in which they have no power to take an Enquest, the tryal shall not be made by Enquest, &c.

792 If a man be bounden unto I. K. upon condition, That if the Obligor doth acquit, and discharge the Obligee before the Feast of Easter, &c. of an yearly Rent of 20 shillings against R. with which Rent all the Lands of the Obligee are charged unto R. for the terme of his life, That then, &c. Notwithstanding that the Obligor doth pay the said Rent unto R. at 15 H. 6. 13.

at every Terme it ought to be paid untill the Feast of Easter be past, and requireth an Acquittance thereof made unto the Obligee by the said R. in writing sealed, and the same delivered by R. unto the Obligee as the deed of the said R. yet he hath forfeited the summe of money comprised in the obligation, because the condition shall be taken, That he ought to discharge the Obligee of the said Rent, in the right, viz. to determine the Rent forever, &c.

793 And it is to know, That if I do enfeoff a stranger of Land upon condition, that he shall re-infeoff me, and no time is limited when the Feoffment shall be made, Then the Feoffee ought to make the feoffment when he
44 E. 3. 7. is required, if the request be made at a lawful time, &c. And it is said, That by such feoffment without other condition, the Feoffee is seised unto the use of the Feoffor, & his heirs for by the condition the Feoffee is not to have any profit, but the Feoffor is to have back the Land by the condition, so as there is not any condition by which the use may be altered. Tamen quære of the use But it appeareth upon the matter, that the feoffment nor the condition is not made for the benefit of the feoffee, &c.

794 But if the Feoffment be made upon condition, that the Feoffee shall pay unto the Feoffor ten pounds, and no time is limited when the money shall be paid. In this case the Feoffee may perform the condition at any time during their lives, viz. during the life of the Feoffor, and the Feoffee, for in this case the Feoffee is seised of the Land unto his own

use by the reason of this Condition, so he hath benefit, and profit thereby, and the Feoffor is to have the 10 l. for the land, &c.

795 If lesse for 20 years of a house granteth his estate unto a stranger upon condition, that he shall obtaine the good will of his Lessor, and the stranger openeth the matter unto the Lessor, and the Lessor saith, that hee shall not have but the House which is fallen, that hee, viz. the Stranger shall have the same, And after the stranger obtaineth the good will of the Lessor of his Grantor, the condition is performed, notwithstanding that the Grantee did not obtain the good will of the lessor of his Grantor, in three or four years after the Grant: for know the condition was unto the profit of the Grantee: And it is not limited when it shall be, and therefore it is sufficient for him to obtain his good will of the lessor of his Grantor within the Terme, and the words of the lessor of his Grantor unto the stranger shall not change the Condition, for a Condition cannot be broken nor determined, if not by acts done betwixt the parties, &c. if not in special cases, &c. M. 18 E. 4. 16. H. 14 H. 8. 22.

796 And therefore if I doe enfeoff I. S. to enfeoff T. K. And I. S. say unto C. D. That he will never enfeoff T. K. By these words the Condition is not broken. But if he had said such words to T. K. the Condition had beene broken. And if R. M. be bounden unto H. S. in 20 pounds, upon condition, That if T. A. be not content at his return from beyond the Seas, with the presentment which the said H. hath made to the said H. 46 E. 3. 4.

R. to the Church C. in Dale, &c. And that he then reſigne, That then, &c. I. N. cometh unto C. and diſagreeth unto the preſentment, and ſaith that he will that one I. S. his Couſin ſhall have the ſame, and prayeth the ſaid R. M. that he will reſigne, and he refuſeth. Now if afterwards the ſaid R. M. cometh unto I. A. unto another place, and ſay unto him that he was preſented unto the ſame Church, and demands of him that he acknowledge the ſame, and he ſay unto him that he is contented there-with, Yet notwithſtanding this agreement after the diſagreement, the Obligation is forfeited, Tamen quære. But if the Condition hath relation unto the Act precedent, and no time is limited when it ſhall be done, yet it ought to be done, when the precedent Act is done, if not, that it be in ſpecial Caſes.

797 And therefore if I. S. be bounden in twenty pound unto me upon condition, that if I do enfeoff him of Black Acre, that then he will pay unto me ten pound, &c. In this caſe preſently when I have enfeoffed the Obligor of Black acre, he ought to pay unto me the ten pounds, notwithſtanding that there be no time limited when it ſhall be paid.

798 And if I do enfeoff a man of Land upon condition, That if I. K. give unto him ten pounds, or goeth unto Rome ſuch a day, &c. That then the Feoffee ſhall pay unto me ten pounds, &c. Now theſe ten pounds ought to be paid when I. K. hath given unto the Feoffee, or gone to Rome before the day limited, notwithſtanding that no time be limited when it ſhall be paid, becauſe it hath relation unto an Act precedent, &c. 799 If

799 If I. S. be bounden unto T. K. &c. upon condition, That if it happen, the goods which I. K hath delivered to C. D to be taken or purloined out of the possession of the same C. D. and then the said C. D. pay and satisfie unto the said I. K. for such goods so taken, That then the Obligation, &c. In this case the satisfaction for the goods ought to be made presently after the taking or purloining of them out of the possession of the said C. D. &c. M. 33 H. 6. 52.

800 And it is to know, That there is a diversity when the condition is to be performed on the part of the Feoffor, or Grantor, &c. And when it is to be performed on the part of the Feoffee, or Grantee, &c. For when the condition is to be performed on the part of the Feoffee, or Grantee, it behoveth him that he be not disabled at the time to do or perform the same. Or if such Feoffee, &c. do any thing which shall turne the prejudice in the title, or of the profit or value of the Land, &c. The Feoffor may presently enter, or the Grant shall be presently determined, if the Condition be annexed unto the Grant, if not, that it be in special cases.

801 But when the condition is to be performed on the part of the Feoffor or Grantor, notwithstanding that they are disabled to perform the same at any time before the day, in which it ought to be performed; yet if they are able to perform the same at the day, &c. it is sufficient, if not that it be in special cases. And therefore if I do enfeoff a man upon condition, that he shall enfeoff a stranger before a day certain, and the Feoffee be-

fore the day is professed a Monke, I may enter presently into the land, and notwithstanding that the Feoffee be de-raigned before the day, yet the Condition shall not be revived. The same law is, If the Feoffee were single at the time of the Feoffment, and before the day, and before the Condition performed he taketh a Wife, &c. Or if he suffer a stranger for to disseise him, and taketh back an estate unto himselfe, and unto another: Or if he suffer the lands to be recovered against him, it is said that notwithstanding that Execution be not sued, The Feoffor may enter, because in prejudice of the Title of the land, or if execution be sued forth by force of a judgement. Or if the Demandant doth enter into the land by force of the judgement, the Feoffor may enter. Or if the Feoffee be bounden in a Statute Merchant, or a Statute Staple, Or grant a Rent issuing out of the same land, the feoffor may enter. So shall it be in all like Cases. And as it is of feoffments upon Condition, so shall it be of leases, grants, &c. upon condition, Mutatis mutandis, &c.

44 E. 3. 7.

8or But if a man doth enfeoff a stranger upon condition, that if the feoffor do enfeoff the feoffee of black Acre, or pay unto him ten pounds before such a day, &c. That then it shall be lawfull for the feoffor, and his heires to re-enter, &c. And afterwards the feoffor is a Monke professed, and is deraigned before the day, and before the day he doth tender unto the feoffee a feoffment of black acre, and he refuseth the same, or tendereth to pay him the ten pounds, and he refuseth to accept

3. H. 6. 50.
7 H 4. 13.

cept thereof, the Feoffor may re-enter, &c. the same law is, of leases and grants, Mutatis mutandis, &c.

803 If a man grant Annuity unto another, untill he be advanced unto a Benefice, and the Grantee taketh a wife, the annuity is determined, because he hath disabled himselfe to take the Benefice: But if a man be bounden unto I. S. in twenty pounds, upon Condition, That if the Obligor do present the Obligee unto the Church of Dale, at the next time that the said Church shall become void, notwithstanding that I. S. taketh a wife, and that the marriage doth continue betwixt them untill the time that the Church doth become void, yet if the Obligor will save his Obligation, he ought for to present I. S. to the same Church of Dale. H. 4. 16. 20 Ass. p. 5.

804 And it is to know, That when an annuity of ten marks is granted unto a man, untill he be promoted unto a Benefice by the Grantor, and it is not expressed of what value the Benefice shall be, the Benefice ought to bee of as great value, as the Annuity, or more, and it ought also to be of as sure Estate as the annuity, otherwise notwithstanding that the Grantee doth refuse it, the annuity is not determined. For if the Grantor doth tender unto the Grantee a Presentment unto a Benefice which is void, to which Benefice the Grantor hath no lawfull Title to present, notwithstanding that the Church be of as great value, or more then the annuity: And if the Benefice be such that the Grantee shall have cure of Soules, if the Grantee being within the age of

twenty four years, the Grantor tender unto him a presentment unto the same Church, the Grantee may refuse the same, notwithstanding that the Church be of sufficient value, and notwithstanding that the Grantor hath lawful title to present unto the same: And if no value of the Benefice be expressed, it shall always have relation to the value of the annuity, and not unto the person of the Grantee.

805 And therefore if I grant unto the Kings Chaplain an annuity of 40 shillings, until he be promoted by me unto a convenient Benefice, and I tender unto him a presentation unto a Vicarage worth ten marks by the yeare, and he refuseth the same, the annuity is determined, &c. But if the Grantor present the Grantee unto a convenient Benefice, upon other consideration then to determine the annuity, and it is so expressed in a deed indented made betwixt them and sealed and
10 E. 3. delivered as their deed, &c. Notwithstanding
Assise 157. that the Grantee doth accept of the presentment, yet the annuity is not determined.

806 And it is to know, That the Grantee may accept of a presentation unto a Benefice conditionally, &c. if the Benefice be convenable, &c. And then he may presently, when he seeth, and perceiveth the same is not convenable, he may refuse the same: But if after he perceiveth that the Benefice is not convenable, he be admitted, he cannot now refuse the same before induction; but if he do not perceive the same before his induction, then he may refuse it for the same cause before his induction. And notwithstanding that the

Gran-

Grantee doth accept of the Benefice generally, yet the Annuity is not determined before he be inducted, if not that the cause of the proroging of his induction be in his own default, in so much as if the day of payment of the annuity be incurred before his admission, and his induction, the Grantee shall have the same, &c.

807 And it is to know, That if I grant a Rent, or Annuity, or other thing, or do enfeoff a stranger of Land, or do lease Land unto a stranger upon condition, That if he purchase Lands or Tenements of the value of 10 pounds by the yeare, that then I shall re-enter into the Land: And if the Condition be annexed unto the Grant, then the grant shall be void and determined: And the Feoffee, Grantee, or Lessee, and a stranger purchase joyntly Land, or Rent of the value of 10 l. by the yeare, yet I may not enter, &c. For notwithstanding that every joynt-tenant be seised of the whole, and through the whole, yet the same doth not prove, that the Feoffee, Grantee, or Lessee alone hath purchased land of the value of ten pounds: And the intent of the Condition was, That it shall be as much in value, viz. of the value of ten pounds unto the Feoffee, Grantee, or Lessee. But if the Feoffee, Grantee, or Lessee, hath purchased Land, or Rent, or Houses, or the reversion of the yearly value of ten pounds joyntly with a stranger, and the stranger who is the joynt purchasor with him doth release unto him all his right in the Land, Rent, or reversion so purchased, The condition is performed, so as that I may well enter. But if such Fe-

Feoffée, Grantée, or Lessée alone purchaseth
21 H. 6. 28. common of the value of 10 pounds, yet I cannot enter; for common is not comprised within the words of the condition, viz. within the words of lands and tenements, &c.

808 And if I. S. seised of Lands of the value of ten pounds, doth grant a Rent-charge of 40 shillings out of the same land unto a stranger, and afterwards I. S. doth enfeoff such Feoffée, Grantée, or Lessee upon condition, the Condition is not performed: But if the Grantee of the Rent doth release all his right in the lands where-out the Rent is issuing, unto the Feoffée, Grantée, or Lessée upon Condition, then being seised of the land by force of the feoffment of I. S. the Condition is performed, &c. The same law is, if the Rent were first granted to such Feoffée, Grantee, or lessee upon Condition, and afterwards such Feoffee, Grantee, or lessee upon Condition, had purchased the land where-out the Rent was issuing, for then he hath lands and tenements of the same value, &c.

809 And if a man seised of land of the value of ten pounds, granteth Common of Pasture for twenty Oxen in the same land unto a stranger, and afterwards doth thereof enfeoff the Feoffée, Grantée, or Lessée upon condition, now the condition is not performed for land or other thing, Tantum valet quantum vendi potest. And this Land cannot be sold by the Feoffee unto the value of ten pounds; for if a man sueth forth an Execution upon a Statute Merchant of the same Land against the Feoffée, Or hath judgement to recover

ecover in value against him, by reason of voucher, this land shall be extended, and the Common shall bee recouped, and deducted, &c.

§10 But if I be bounden unto I. S. in an undred pounds to enfeoff him of the Manor f Dale before such a day, and after the deli=ery of the Bond as the Deed of the Obli=or. The Obligor doth grant a Rent-charge f four pounds issuing out of the Manor of Dale, and afterwards doth thereof enfeoff the Obligee before the day, the Condition is per=rmed: But if he had tendered a feoffment f the moity, or of the third part of the Manor nto the Obligee before the day, &c. the Ob=igee might well refuse the same, and bring is action of debt upon the Obligation, Caula ater, &c.

§11 And if a man be bounden for to appro=riate a Church at his own costs, and before e Appropriation a pension is granted out f the same, and afterwards before the day he h appropriate the same, the condition is nformed, &c. If a man seised of land doth hereof enfeoff a stranger upon condition, that he, viz. the feoffee doth marry a wife seised of nd of the value of ten pounds, That then the offor shall re-enter. And a single woman sed of land, of the value of 20 pounds, doth nt a Rent=charge of five pounds issuing t of the same lands unto the Feoffee; And rwards the feoffee, and shee doe enter=rry, Quære, if the Condition be perfor=d, for the land was not of the value of pounds, till after the inter-marriage,

§12 If

812. If a man seised of Land doth there enfeoff a stranger upon condition, That if purchase Land of the value of twenty pound that then the Feoffor shall re-enter: And terwards the Feoffee doth recover Lands that value in an action auncestrel, or possessory, the cause of which action was given un him after the feoffment upon condition, or fore the feoffment upon condition, the condition is not performed. Quære, if the recovery be upon a false title. But if the feoffee after the feoffment doth disseise a stranger of La of the value of 20 pounds, the condition performed, notwithstanding that the Disseisee do re-enter into the same Land, or doth recover the same in an assise, &c.

813 If such Feoffee upon condition be impleaded of the Land of the value of 20 pound of which he was seised at the time of the feoffment, and he voucheth a stranger by force a warranty made upon him before the feoffment, and the Vouchee doth enter into warranty and loseth, &c. And the Demandant hath judgement for to recover against the Tenant, and the Tenant hath judgment to recover over in value against the Voucher and each of them hath execution against the ther. Now it seemeth the condition is performed, for notwithstanding that the warranty was before the feoffment upon condition yet the title for to recover in value shall have relation, but unto the Voucher, and is in the Land recovered in value by the Vouchee, in so much as the Voucher hath the La recovered in value by disseisin, the Disseis shall have thereof a Writ of Entre sur disseis

enle per against him who recovereth them in value, &c.

814 Know, that some have said, when the condition cometh from the Feoffor, and the Feoffee hath done as much as lieth in him for to perform the condition, so ỹ there is no default in him that it is not reaſon ỹ he should lose ỹ land. And therefore they say, that if I.S. be seised of Land in fee, and doth thereof enfeoff T.K. upon condiciõ ỹ he shall pay unto C. B. 20 pounds before such a day, &c. and he doth tender to him the money accordingly, and he refuseth the same, They say that T. K. shall hold the Land unto him, and his heirs for ever; because the condition cometh from the feoffor, and no default is in the feoffee, &c. And it is not reason, that by the negligence of a stranger the feoffee should lose the Land where he doth not take upon him to make the stranger to receive the money; and it is the folly of the feoffor to make the feoffment upon such a condition, if not that he well knew that the stranger would receive the money. And they say, that the same Law is, if a man seised of Land doth thereof enfeoff I. S. upon condition that he shall enfeoff T. K. for a certain sum of money, and expend the same money for the soule of the feoffor. And I. S. doth offer unto T. K. a feoffment of the same Land for the same sum of money, and he refuseth the same, they say that the feoffor nor his heirs shall not re-enter, but that the feoffee should hold the Land to him, and his heirs for ever. M. 19 H.6. 24. P.2 H 4.2.

815 And also they say, That if I do enfeoff I. S. of Land upon condition that he shall thereof enfeoff T. K. and I tender a deed of the feoffment

feoffment unto T. K. and he doth refuse the same, that neither I nor my heirs shall enter, but that the feoffee and his heirs shall hold the Land for ever. And they say, that these Cases are not like unto this Case, viz. where I bailе my Goods unto I. S. to bailе over unto T. K. and I. S. doth tender the goods unto T. K. and he refuseth to have them. In this case I shall have my goods again, because that the property of them was never out of me, and the property thereof was at no time in I. S. But in the Cases before of Feoffments it is otherwise: And also they are not like unto the Case, where a man is bounden in forty pounds that he shall enfeoff T. K. of Black Acre at a day certain. And the Obligor doth tender the feoffment according unto the condition of the Bond unto T. K. and he refuseth the same, The Obligor hath forfeited his Bond, because he took upon him for to enfeoff T. K. And the Obligor is bounden for to do it at his perill, &c. But notwithstanding all these reasons, The Law is contrary in the Cases before of Feoffments, because that it appeareth by the words of the condition, that the intent of the condition is not. That the Feoffee shall hold the Land unto him and his heirs for ever, if the condition be not performed, and the condition is not against the Law, nor repugnant unto the Law, nor impossible: And therefore if it be not performed, the Feoffor and his heirs may enter. And sundry Cases are put before concerning this matter, to prove the same in diverse places of this Treatise of Conditions.

816 But if I be ſeiſed of Land, and do thereof enfeoff a ſtranger, upon condition, that before ſuch a day he ſhall give the Land unto a ſtranger in taile, and before the day the Feoffee doth tender a gift in taile of the ſame land unto the ſtranger, and he refuſeth the ſame, In this Caſe, the Feoffee ſhall keepe the Land unto him, and his heirs for ever, becauſe that the intent of the condition according unto the words of the condition, cannot be otherwiſe taken, for notwithſtanding that the gift in taile had been made according to the condition, yet the reverſion of the ſame Land doth remain in the feoffee, and his heires, which reverſion ſhould be devеſted out of the feoffee and his heires, if the feoffor ſhould enter into the Land, and therefore the feoffee ſhall hold the Land to him and his heirs for ever, &c. P. 2 E. 4. 2.

817 And it is to know, That if a man be ſeiſed of Land, and doth thereof enfeoff a ſtranger, upon condition, That the Feoffee ſhall give the ſame Land unto the Feoffor and his Wife in ſpecial taile, the remainder unto the right heirs of the feoffor, and the feoffor dieth without iſſue by his Wife, and his Wife not with Childe, and the Wife doth take another Husband, and the feoffee doth eaſe the land unto the ſecond Husband, and his Wife, for the life of the Wife without impeachment of waſte, the remainder thereof unto the right heirs of the feoffor; In this caſe the condition is performed, and yet the eſtate is not made according to the words of the condition, &c.

818 And

818 And know, That Land, Rent, or Common, &c. unto which a condition in fact is annexed during the estate unto which the condition is annexed in possession, or in right, is chargeable with the condition, in whose hands soever the Land, Rent, or Common shall come, if it come not unto our Soveraign Lord the King, of which I will not speak, or otherwise if it be in special cases. And therefore if I be seised of Land in fee, and do thereof enfeoff I. S. upon condition; and the feoffee is disseised, and the Disseisor thereof dieth seised, and his heire is in the Land by discent, in whose time the condition is broken; I may enter for the condition broken. And in the same Case, it is said, That I may enter upon the heir of the Disseisor for the condition broken, before the disseisin, notwithstanding the discent. And others think the contrary, because that then my title of entry is before the discent, which title of entry shall be bound by the discent. Quære, for if the condition be broken (the Land being in the possession of the feoffee) and afterwards the feoffee thereof doth die seised, yet the feoffor may enter upon him for the condition broken, before the discent, &c.

22 Ass. p. 49. 819 If there be Lord and Tenant, and the Tenant doth enfeoff a stranger upon condition, and the feoffee dieth without heir, or is attainted of felony, or murther, or petty treason, &c. So as the Tenancy doth come unto the Lord by escheat; yet the Tenancy doth remain charged with the condition. But if a man seised of land doth lease the same land for life upon condition, and afterwards doth gran-

grant the reversion unto a stranger upon condition, and the Lessee doth attorn, and afterwards dieth, and the Grantee of the reversion doth enter into the Land, he shall hold the Land without any condition, because that the estate unto which the condition is annexed is determined in possession, and also in right. And if one doth disseise the feoffee of the Disseisor or the heir of the Disseisor, or any other person who hath the Land, by unjust title, and doth thereof enfeoff a stranger upon condition, and the Land is afterwards lawfully devested out of the possession of the feoffee, &c. by him who hath right according to his title, by entry or by action, as the case shall require, the Land is discharged of the condition, &c.

820 But if a man seised of Land in fee, doth lease the same land unto a stranger for years, and one who hath no right unto the land doth put out the Lessee, and dieth thereof seised, and his heire is in the land by discent, and the heire doth enfeoff a stranger of the same land upon condition, upon whom the Lessee for years within the terme doth enter, claiming this terme. The Lessee shall hold the land during all the terme discharged of the condition, and yet the estate of the Feoffee upon condition is not altogether determined in possession, for notwithstanding the entry of the lessee for years, the possession of the freehold of the same land doth remain in the Feoffee upon condition, &c. 8 H. 7. 9. 20 E. 4. 18.

821 If I be seised of land in fee, and do enfeoff a stranger thereof upon condition, and my feoffee doth enfeoff I. S. of the same land

upon

upon condition, the condition which was annexed unto the first feoffment is broken, for which if the first feoffor entereth, and re-infeoffeth I. S. without any condition, I. S. shall hold the Land discharged of the condition, &c. Causa patet, &c.

822 And it is to know, That if a man seised of land in fee doth take a Wife, and during the Marriage doth thereof enfeoff a stranger upon condition, and the Husband dieth, and the feoffee doth endow the Wife of the feoffor of a third part of the land, &c. this third part is discharged of the condition. And if the woman do grant her estate unto the feoffee who is in reversion, the condition is presently revived, because that this Grant doth enure by way of surrender: Yet if the Woman had granted a rent-charge issuing out of the same Land, and afterwards had granted her estate unto the feoffee in the reversion, the feoffee should hold the same charged during the life of the woman tenant in dower. See divers cases concerning this matter in the Chapters of Grants and Surrenders. Mutatis mutandis, &c.

823 If feoffee upon condition be of land, and he doth lease the same land unto a stranger for life, and the feoffor doth release all conditions, and all demands which he hath unto the same land unto him in the reversion; By this release the free-hold is discharged of the condition: And if the feoffor had released all conditions, which he had in the same lands unto the lessor for life; by such release, the reversion is discharged of the condition.

4H. 7. 6. 824 But if I. S. be Collector of my Rents of

of diuers houses, and he be bounden unto me in a hundred pound, that he shall yeeld unto me a iust accompt, and that within forty days next after the accompt, that he shall pay all that which he is found in arrerage; and afterwards before any accompt, I do discharge the Obligor of the collecting of the rent of one house, this is no discharge for the rest, but he ought to collect the Rents of the residue of the houses, and render accompt thereof, &c. otherwise he doth forfeit his Bond; for that the discharge is for his advantage, &c. If there be Lord and Tenant by fealty, and by the service to plow a hundred acres of land, and the Lord doth discharge him of the plowing of 20 acres of the same land, this doth not discharge him from plowing of the residue of the hundred acres, for this discharge is for the advantage of the Tenant; and the service is not so an entire service, but that it may be severed, &c. 7 H. 7. 4.

825 But if I be seised of ten acres of land in fee, and I do lease the same land unto a stranger for life, or for years, reserving ten shillings rent unto me, &c. the Rent payable yearly at the Feast of Easter: and the Lessee doth binde himselfe unto me in a Bond of 100 pound to pay the Rent reserved upon the lease iustly according to Law, and before any day of payment I do put the Lessee out of part of the Land, and the Lessee doth occupie the residue of the Land for the whole yeare, and will not pay any Rent, yet the bond is not forfeited; for by this putting out of the Lessee of parcel of the land, the whole Rent is put in suspence: But if one day of pay- P. 9 E. 4. 1. P. 24 E. 4. 34.

P.45 E.3.3 M.44 E.3. 37. ment be incurred before the Ouster, then the Lessee ought to pay the same, otherwise he hath forfeited his bond: But if I do put the Lessee before the Feast of Easter, out of one acre of the land, parcel of the land leased, and do occupie the same untill the feast of Easter, and then the Lessee doth re-enter, and doth occupy the land untill the next feast of Easter, and doth not pay me any Rent for this latter feast, the bond is forfeited, Tamen quære.

22 H.6.ac. 826 And if a stranger who hath not any right, doth put out the Lessee for yeares of the same land before any day of payment, and keepeth possession thereof untill the day of payment be past: Yet the Lessee ought to pay me the Rent at the day whereon it ought to be paid, otherwise he hath forfeited his bond. Causa patet.

827 But if a Disseisor doth lease Land which he hath by disseisin for terme of life, or for yeares, reserving Rent, payable yearly at the feast of Easter, and the Lessee doth binde himselfe in ten pound to pay the Rent unto the Lessor justly, and the Disseisee doth put out the Lessee before any day of payment, and afterwards the day of payment doth come, and the Lessee doth not pay the Rent at the day, the bond is not forfeited, for he hath no remedy against the the Disseisee, because he had a right to enter: But if a day of payment be incurred before the disseisin, it behoveth the lessee to pay the rent at the day, otherwise he forfeiteth his bond, &c.

P.9 E.4.1. M.12 H.8. 3. 828 If three Coparceners be seised of a Manor, and one of them in her own name, and without the agreement of the other Coparceners

perceners doth leaſe the whole Manor unto I. S. for four yeares, yeilding five pounds yearly at the Feaſt of Eaſter unto the Leſſor, and her heirs, and I. S. doth binde himſelfe in forty pounds unto his Leſſor, to pay the Rent reſerved, &c. And before any day of payment the two other Coperceners which did not make the leaſe, do put out the leſſee out of the whole Manor, and keep the poſſeſſion untill the day of payment of the Rent be incurred; yet it behoveth the Leſſee to pay the third part of the Rent reſerved to his Leſſor, otherwiſe he hath forfeited his bond, for the two Coperceners who did put him out have not right but to two parts of the Manor, &c. P. 20 H. 6. 24.

829 If a man be ſeiſed of two acres of land in fee, and do enfeoff I. S. of one of them by deed with warranty and I. S. is impleaded of the ſame acre by a ſtranger, and I. S. doth vouch his Feoffor to warranty, &c. and after the ſummon ad warrantizandum, &c. awarded, and before the day of the retorn, his Feoffor being ſeiſed of another acre of land, doth thereof enfeoff a ſtranger upon condition, and at the day of ſummons ad warrantizandum, returned, the feoffor doth appear, and entereth into the warranty, and pleads, and the Demandant hath judgement for to recover againſt the Tenant, and the Tenant hath judgement to recover ober in value againſt the Vouchee, and the Demandant doth enter into the land in demand by force of the judgement, and the Tenant by way of ſuit (as he ought) hath execution againſt the feoffee upon condition of the ſame acre whereof he

was enfeoffed by the Voucher Meſne, between the awarding of the ſummons ad warrantizandum, and the day of the return of the ſame Writ, the Tenant, viz. I. S. ſhall hold this acre diſcharged of the condition, becauſe he is in the ſame acre by a title before the feoffment upon condition for his title until this acre doth begin by the Voucher, which was before the feoffment upon condition, &c. And as it is ſaid of Land, ſo ſhall it be of a Rent, or Common, and of other things which lie in grant, Mutatis mutandis, &c.

830 Now is to ſhew, what perſons ſhall take advantage of conditions when they are executory, and what perſons ſhall take advantage of conditions when they are executed. And know, That no manner of perſons ſhall take advantage of conditions executory, if they be not parties or privies, &c. And not all manner of privies, for privies in eſtates ſhall not take advantage of conditions Executories, &c.

831 And therefore, if a man ſeiſed of one acre of land, doth leaſe the ſame acre for life, upon condition that the leſſee ſhall pay twenty ſhillings at a day certain, the remainder of the ſame of land unto I S. in fee, I. S. ſhall not take advantage of this condition by way of entry, and yet he is priby in eſtate, for his eſtate and the eſtate of the Leſſee were made at one and the ſame time, &c. Nor privies in Fait ſhall not take advantage of Conditions executories? And therefore, if a man ſeiſed of land, doth leaſe the ſame land for life upon condition, &c. and afterwards doth grant the reverſion unto a ſtranger in fee, and the

leſſee

leſſée doth attorne, yet the Grantée ſhall not take advantage of this condition by way of entry, notwithſtanding that he be privy in Fait, and he is ſaid privy in Fait, becauſe he hath the reverſion by grant, &c. Nor privies in Law ſhall not take advantage of conditions Executories.

832 And therefore, if there be Lord and Tenant, and the Tenant doth leaſe the tenancy for life unto a ſtranger, upon condition, and afterwards the Tenant dieth without heir, and the reverſion doth eſcheat unto the Lord, the Lord ſhall not take advantage of the condition by way of entry: And the Lord in this caſe is ſaid privy in law, becauſe he hath his eſtate in the reverſion by the law onely, viz. by eſcheat. But privies in right ſhall take advantage of conditions Executories, &c.

833 And therefore, if leſſée for yeares be of land, and he granteth his eſtate unto a ſtranger upon condition, &c, and maketh his Executors, and dieth, in this caſe, his Executors ſhall take advantage of this condition by way of entry, for they are privies in right; for if the condition be broken, and they do enter into the land, &c, they ſhall have the ſame in the right of the Teſtator unto the uſe of his ſoul, &c.

834 If a man ſeiſed of land for the terme of twenty years in the right of his Wife, doth leaſe the ſame land unto a ſtranger for ten years, rendring Rent, &c. and for default of payment, a re-entry, and afterwards the Husband dieth, and then the Rent is behind, I conceive that the Wife ſhall have the Rent,

not the Executor, because that the Rent was to the Husband by way of reservation, and the Wife hath the remain of the Terme; but notwithstanding that the wife shall have the Rent, yet she shall not enter for the condition broken, Causa patet, &c.

835 If an Abbot doth enfeoff a stranger of land, which he hath in the right of his House upon condition, his Successor shall take advantage of the condition by way of entry, if it be broken, because that he is privy in right. The same law is of a Deane and Chapter, and such like persons, Mutatis mutandis. And privies in blood, as the heire of the Feoffor, &c. shall take advantage of conditions Executory by way of entry. &c. And the parties unto the conditions shall take advantage of conditions by way of entry, as in the cases before is shewed. And as it is said of land, so shall it be of things which lie in grant, Mutatis mutandis. And when it behoveth such persons to take advantage by way of entry, or to make a demand, M. Littleton hath shewed in his third Book in his Chapter of Estates upon condition, Mutatis mutandis

40 Ass. p. 11.

M. 4 H. 6. 8.

T. 20 H. 6. 32.

836 And it is to know, That if a man seised of land in fee, doth lease the same for life, or for yeares, reserving ten shillings Rent payable yearly at the Feast of Easter, and if the Rent be behinde in part, or in all, by the space of a moneth after any day of payment, in which it ought to be paid, That then it shall be lawful for the lessor, and his heires to re-enter, &c. And the lessor cometh upon the land at the last instant of the day of

F. 6 H. 7. 2.

the

the Feast-day of Easter, and there demandeth the Rent (as he ought) if he will take advantage of the condition, the lessee is not tied to be upon the land to pay him the Rent, but at the last instant of the day on which it ought to be paid, and the lessor then is there to demand the Rent, and there is no body there to pay it unto him, notwithstanding this demand, if the lessor will take advantage of the condition by way of entry, it behoveth him to make the like demand the last instant of the day of the moneth, and if he do make such demand, and the lessee is there, or other for him ready to pay him the Rent, he shall not enter, notwithstanding that there was no body ready to pay him when he made the first demand: And yet if he had not made the first demand, and that there was no body ready for to pay him, yet he could not re-enter, if the lessee or any for him be upon the land at the time of any of the demands ready to pay the Rent, and doth tender the Rent unto him who demandeth the same (as he ought to doe,) &c. And if hee refuseth it, Then the lessor, nor any for him can re-enter. And if (when the first demand was made) there was no body for to pay the Rent, and Mesne, after the demand, and before the last day of the moneth, the lessee doth tender the money unto his lessor off the land, and the lessee doth refuse the same, and at the latter end of the last day of the moneth, the lessor doth make another demand of the Rent upon the land, and there is no body ready for do pay the same, The lessor may re-enter, notwithstanding the refusal of the Rent at the

20 H. 6. 32.

M. 2 H. 7. 14.

time of the tender made unto him of the land; because he was not bounden to receive the same off the land. Tamen quære thereof: But if he
T. 22 H. 6. 65. had received it, then he could not re-enter, notwithstanding that the receipt thereof were off of the land.

837 If meane, after the first demand, and before the latter end of the moneth the lessor do happen to come upon the land, and the lessee doth tender unto him being upon the land the rent: It is said that the lessor is bounden for to receive it, because the Rent was then due, and it was tendred unto him in the place where it ought to be paid, &c.

838 And it is to know, That if a man be seised of a Mansion House, with divers Pasture Fields, arable lands, and Woods thereunto appertaining, in fee, and doth lease the House, with all the Fields, and Woods unto a stranger for life, or for years, reserving the Rent of ten pounds payable yearly at the Feast of Easter, &c. And for default of payment thereof, That it shall be lawfull for the lessor and his heires to re-enter. In this case, the lessor may distrain in every parcell for the whole Rent: But if he will take advantage of a Re-entry, he ought to demand the Rent at the Mansion-House, because it is parcell of the thing let, and it is the most convenient place for the Lessee to stay, to tender the Rent, &c. And if such lease be made of diverse Fields, and Woods, without any Mansion-house, If the Lessor will take advantage by re-entry, it behoveth him openly to demand the Rent upon parcell of the Lands leased, which by intend-

ment

ment of the Law is as convenient for the Lessee to stay there to be ready to pay the Rent, as any other place parcel of the things let is, and not privately to demand the Rent in one parcel of the Wood, or in other private place of a Field, to the end the Lessee may not have knowledge of the demand, notwithstanding that he be upon the Land ready to pay the Rent, &c.

839 And it is to know, That when Conditions are executed, strangers shall take advantage of them by way of plea, &c. As put case, a man seised of Land, doth thereof enfeoff a stranger upon condition, and afterwards the condition is broken, for which the feoffor doth enter into the land, & doth thereof enfeoff I. K. upon whom the Feoffee upon condition doth re-enter: And I. K. doth bring an Assise against him, and the Feoffee upon condition doth plead the feoffment simply without any condition, and giveth colour to the Plaintiff, &c. The Plaintiff may plead that the feoffment was made upon condition, and shew the same in certain, and that the Feoffor did enter for the condition broken, &c. and did enfeoff him, &c. This is good matter of title, &c. And yet the Plaintiff is a stranger unto the feoffment upon condition, &c. M. 44 E. 1. 8. P. 45 E. 3. 6

840 It is commonly said, That when any person doth enter for a condition broken, That he shall be seised in the same manner and course as he was when he did depart with his possession, upon which the condition in fait was made. And therefore, if the Lessee upon a condition in fait of Land doth grant a Rent-

Rent-charge, iſſuing out of the ſame land, or doth make a recogniſance, or is bounden in a Statute Merchant, or in a Statute Staple, &c. And the Conuſee or Obligee hath the Land whereof the feoffment was made upon condition in execution, and afterwards the condition is broken, for which the Feoffor doth enter, The intereſt and eſtate of the Conuſee or Obligee is defeated and avoided, and the Land alſo is diſcharged of the Rent granted by the Feoffee, and yet the condition was broken after the Grant, Recogniſance, and Obligation: And the reaſon is, becauſe he made the feoffment of the land upon a condition expreſſed in the Deed, diſcharged of the Rent, and of ſuch execution. And if the condition broken, he may re-enter, and have the land back in the ſame plight and condition as it was when he did depart with the eſtate upon condition. Notwithſtanding, it doth not follow in every caſe, That when any perſon doth enter for a condition in fait broken, That he ſhall be ſeiſed in the ſame courſe, and in the ſame plight and condition as he was when he did depart with the eſtate unto which the condition was annexed.

841 And therefore if a man ſeiſed of Land doth leaſe the ſame unto a ſtranger for life, and the Leſſee for like doth thereof enfeoff a ſtranger upon condition in fait, and afterwards the condition is broken, and the leſſor who is the feoffor doth enter. Now he is not ſeiſed in the ſame plight as he was at the time of the feoffment made, for then the leſſor could not enter upon him, and ouſte him of his Terme, but now the leſſor may enter up-

on him, and put him out of the Terme, for by the feoffment his Lessor had title of entry, which title of entry is not discharged by the re-entry of the lesse for the condition broken, Causa patet.

842 If Cestuy que use in fee of certaine Lands doth enter upon his feoffee according to the Stat. of R. 3. in such case provided, and doth thereof enfeoff a stranger upon condition, that he shall pay unto him ten pounds before the Feast of Easter next following, and the Feoffor doth enter for the condition broken, in this case, the use is not revived, for by the feoffment made upon condition, the use was determined and avoided, &c. And if there be disseisor of land and he doth die thereof seised, and his heire is in the same land by discent, and the Disseisee doth enter upon the heire and put him out of the land, and doth thereof enfeoff a stranger upon condition, and the heire of the Disseisor doth enter upon the Feoffee, and the Disseisee doth bring a Writ of Entre sur disclin. en le per against the heir of the Disseisor, and doth demand the same land, and doth recover by confession, and hath execution thereof, and the Feoffee upon condition doth re-enter upon him, and afterwards the condition is broken, for which the Feoffor doth enter. Now the Feoffor is not seised in the same course as he was at the time of the feoffment made, for at the same time the heire of the Disseisor might have entred upon him, and put him out of the land: but now he cannot so do, &c. 43 Ass. p. 47. M. 5 H. 7. 5. 20 Ass. p. 2.

843 If there be Lord and Tenant, and the Lord doth disseise the Tenant of the tenancy, and

and doth thereof enfeoff a ſtranger upon condition, and afterwards the condition is broken, for which the Lord doth enter, upon whom the Tenant doth enter, the Seignory is not revived; and yet if the Tenant had entered upon the Lord before the feoffment made by him, the Seignory had been revived. Cauſa patet. The which proveth that the Lord is not ſeiſed in the ſame courſe and plight after his entry for the condition broken, as he was at the time of the feoffment made upon condition, &c.

844 And it is commonly ſaid, ỹ when a man doth enter by reaſon of a condition in Law, That he ſhall take the land as he finds it; and the ſame is not ſo in all Caſes. For if a man ſeiſed of land doth leaſe the ſame for life, there is a condition in law annexed unto the land, viz. That if the leſſee doe diſcontinue the reverſion, that the leſſor ſhall enter. And alſo another condition by Statute-law annexed thereunto, viz. That it ſhall not be lawful for the leſſee to do waſte in ỹ land leaſed, &c. If in ſuch caſe the leſſee doth enfeoff a ſtranger of the land leaſed, and the Feoffee doth grant a rent-charge out of the ſame land, and the leſſor doth enter upon the feoffee, hee ſhall hold the land diſcharged of the Rent, becauſe his title of entry doth commence by the feoffment which was before the grant: But if the leſſee had granted the Rent before the feoffment, and then the leſſor had entred upon the Feoffee, he ſhould hold the land charged during the life of the leſſee, Cauſa patet, &c. And if the leſſee had committed waſte, and had granted a Rent-charge unto a ſtranger after the waſte done,

and

and the lessor had brought his action of waste, and recovered, the lessor should hold the land discharged of the Rent: But if the grant had been made before the waste done, then he should hold the same charged during the life of the lessee, &c.

845 And if there be Lord and Tenant, and the tenant doth enfeoff an Abbot of the tenancy; and the Abbot doth grant a Rent-charge issuing out of the tenancy, and the Lord doth enter within the year and day after the alienation made according to the Statute of Mortmain, the Lord shall hold the tenancy discharged of the Rent granted by the Abbot, &c. But if the Tenant had granted a Rent-charge issuing out of the tenancy before the alienation in Mortmain and the Lord had entred within the year after the alienation, &c. In this case the Lord should have holden the tenancy charged with the Rent, &c. 21 H. 6. 58.

FINIS.

A Profitable BOOK

OF

Mr. *John Perkins*,

Sometimes Fellow of the Inner

TEMPLE.

BIBLIOTHECA BODLEIANA

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8° G. 25. Jur.

terme unto a ſtranger, and afterwards died within the terme. It is ſaid by ſome, that the heir ſhall not have any remedy. And by the like reaſon, they ſay, that the executors of I. ſhall have the reſidue of the terme, and not the heire: But notwithſtanding that the Law be ſo, yet that doth not prove that the heire of I. ſhall not have the reſidue of the Terme: for if Land deviſable be deviſed unto me and my heirs, &c. And I enter and ſell the land unto a ſtranger, my heire hath no remedy notwithſtanding the Deviſe, and yet if I do not ſell, nor alien the ſame, but continue the poſſeſſion thereof, according unto the deviſe, at the time of my death, my heir ſhall have it according to the deviſe.

560 And if a man hath a terme for years in land or, &c. in the right of his wife, and he granteth the whole term unto a ſtranger, and dieth within the terme, his wife hath no remedie to have the reſidue of the terme: But if the husband hath not granted the terme unto a ſtranger, but continueth in poſſeſſion at the time of his death, and dieth within the term, his wife ſhall have the reſidue of the yeares, &c.

7 H.6.1.

561 If a man ſeiſed in fee of white acre and black acre deviſable, and deviſeth white acre unto I. S. To have and to hold to him and the heirs of his body begotten, and deviſeth black acre unto I. K. to have and to hold in the ſame manner and forme as I. S. holdeth white acre, by theſe words I. K. ſhall have an eſtate taile in black acre: and the reaſon is, becauſe that the will, and the intent of the giver ſhall be obſerved: See divers caſes concerning this matter

matter in the Chapters of grants faits, Mutatis mutandis, &c.

562 And as it is ſaid, the will of the Deviſor ſhall alwayes be obſerved, if it be not impoſſible, or much againſt the law, and in other ſpecial Caſes, in ſo much, as if a man ſeiſed of land deviſable, leaſeth the ſame land unto a ſtranger for life, and afterwards by his will deviſeth the reverſion of the ſame land unto the ſtranger in fee, and dieth, it is a good deviſe without attornment; the ſame Law is, of a rent deviſable, &c. 34 H. 6. 7. per Littleton.

563 If a man ſeiſed of land deviſable in fee, deviſeth the ſame unto I. S. Clark, upon condition that he ſhall be a Chaplain, and ſhall ſing for the ſoule of the Deviſor all his life, and that after his deceaſe the land ſhall remain unto I. S. Major of S. and his ſucceſſors to finde a Chaplain perpetually for to ſing for the ſoule of the Deviſor, and the Deviſor dieth, and I. S. being of the age of 24 years entreth and holdeth the land for 4 years, & is not a Chaplain, the heir of the deviſor may enter for the condition broken, & yet the remainder ſhall not be defeated, but ſhall take effect after the death of the Deviſee for life, Tamen quære. 20 Aſſ. p. 19. Aſſiſe 28.

564 But if there be Leſſee for life, the remainder unto a ſtranger in fee by deed indented, upon condition that the Leſſee ſhall pay yearly 5 s. at the feaſt of Eaſter unto the Leſſor and his heirs, and after the condition is broken, for which the Leſſor doth enter: Now by his entry the remainder is defeated, becauſe it was all by one deed, and the condition did depend upon the whole eſtate &c. And the leſſor cannot have a leſſer eſtate when he entreth for

the condition broken, then he had at the time when he left the poſſeſſion, &c. No more then a man ſeiſed of land in fee by matter in deed or in writing, can leaſe the ſame land for life, reſerving unto himſelfe a leſſer eſtate in reuerſion, then a fee, &c. And yet in the caſe of a deviſe, the remainder ſhall not be auoided by the entry of the heir for the condition broken, becauſe the will of the Deviſor ſhall be obſerued inaſmuch as it may be, &c.

565 And if a man ſeiſed of land in fee, leaſeth the ſame land by deed indented for life, the remainder unto a ſtranger in fee, reſerving unto the Leſſor & his heirs 10 s. rent, and if the rent be behind, &c. that the Leſſor and his heirs ſhall enter for the condition broken, and ſhall retain the land during the life of the Leſſee, and no longer; If the Leſſor entereth for the condition broken in the life of the Leſſee, and afterwards the Leſſee dieth, he in the remainder may enter upon the Leſſor, and haue his remainder, &c. And know, that in the principal caſe, the remainder cannot take effect preſently after the condition broken, becauſe the deviſe was once effectual in the Deviſee for life.

566 But if Land be deviſed for life, the remainder unto a Monk for his life, the remainder unto a ſtranger in fee; in this caſe, the laſt remainder ſhall take effect preſently after the death of the firſt Deviſee for life, notwithſtanding that the Monk be alive, &c. and the reaſon is, becauſe the remainder never took effect in the Monk, and alſo there is a particular eſtate, upon which the remainder doth depend, and therefore in this caſe the remain-

der

der in fée ſhall be good notwithſtanding that it were by way of grant, &c.

567 If a man ſeiſed of Land deviſable in fée, doth deviſe the ſame unto a Monk for life, the remainder unto a ſtranger in fee, and the Deviſor dieth, the Monk being alive. In this Caſe, the remainder ſhall take effect preſently, becauſe the Monk tooke nothing by the deviſe; and notwithſtanding that there be not any particular eſtate upon which the remainder doth depend, yet the remainder is good, for that the will of the Deviſor ſhall be obſerved, inaſmuch as it may be, &c.

568 But if a leaſe of Land be made unto a Monk for life, the remainder unto a ſtranger in fée, this remainder is void, &c. If land be deviſed unto I. S. for life, the remainder unto T. K. in fee, and I. S. dieth before the Deviſor dieth, and then the Deviſor dieth, it is a good remainder to T. K. and ſhall preſently take effect, &c. 9 H. 4. 24. 3 H. 6. 47.

569 If a man ſeiſed of land deviſable in fée, doth deviſe the ſame land unto I. his Son in tail, the remainder unto a ſtranger in fee, and I. entreth into the land, and ſaith that he will occupie the land as heir, and not by force of the Deviſe; yet notwithſtanding ſuch diſagreement he ſhall be ſeiſed by force of the Deviſe: For his father might have deviſed the Land unto a ſtranger in fée, and the ſon was without remedy, and therefore if he will have the land, he ſhall take it as his father gave it unto him, for otherwiſe it ſhould be at his will and liberty, whether the will of his father ſhould be obſerved or not, which the Law will not ſuffer. But he may refuſe the poſſeſ-

ſion and not meddle with the ſame, and ſo may diſagree. For a man ſhall not be compelled to take by a deviſe whether he will or no. And notwithſtanding that he had ſo diſagréd to the deviſe, the remainder ſhall not be avoided. And it ſameth to ſome, that then he in the remainder may enter, and preſently execute the remainder, Tamen quære, &c.

570 Now is to know, how the Deviſees ſhall come by the things deviſed: And as to ỹ, know, that for all chattels reals and perſonals deviſed, if the Executors will not deliver, aſſigne, or pay them unto the Deviſees, that they have no other remedy but to ſue for them in the Spiritual Court, for the law doth more reſpect the ſoul of the Deviſor, then the Deviſees, and therefore the Law will not ſuffer the deviſees to take their legacies out of the poſſeſſion of the executors in deſpight of them, because the legacies ſhall not be aſſigned, delivered, or paid, until all the debts of the Teſtator be ſatisfied and paid, in ſo much as if the Executors aſſigne, deliver, or pay the legacies, before the debts of the teſtator are paid, and there be not ſufficient goods of the teſtator to pay his debts, the Executors ſhall be charged of their own goods &c.

20 E. 4. 9.

2 H. 6. 15

571 And it is to know, That if the Executors will, that they may uſe ſuch deceit, that the legacies ſhall never be aſſigned, delivered, or paid notwithſtanding that they have goods in their hands of the Teſtators of the value of one thouſand pounds over and above the debts and legacies of the Deviſor, &c. For they may cauſe ſtrangers to bring actions of debts againſt them as Executors upon falſe obligations,

obligations, &c. And ſo they may always plead when the Deviſees demand or ſue them for their legacies in the ſpiritual Court, that the debts of the Teſtator are not paid, and that there are more ſuits againſt them, then the goods of the Teſtator are ſufficient to ſatisfie or pay: and by ſuch covin they may defraud the deviſees of their legacies: And the Executors may, or one of them may by covin confeſſe the Plaintiffs action, and execution may be ſued againſt them by covin, &c. Or otherwiſe they deny the obligations, by pleading that they were not the deeds of the Deviſor, &c. And they may give ſuch evidence, that it ſhall be found againſt them, &c. And by ſuch deceit, and divers other covenous means, the deviſees may be defrauded of their legacies, for ſuch deceits may be ſo ſecretly done, that they ſhall not be intended covenous. And therefore it ſhall be well for ſuch Deviſors to deliver ſuch things, or cauſe them to be given or delivered unto them in their life-times, and not to give them by way of Legacy, and the ſame is a good and ſure way to execute their intents. And divers other good, and ſure means there are, &c.

572 But if a man maketh two Executors, and by his Will giveth 20 l. to one of them, he may take his legacy without the aſſent of his Co-executor, notwithſtanding that he hath not adminiſtred before, &c. If the Teſtator hath land for the terme of xx years, and he deviſeth the ſame land unto one of his Executors, he may enter, and occupie the land according to the deviſe without the aſſent of the other Executors, &c. 11 H. 4. 8.

573 If the Teſtator hath Lands for the terme of twenty yeares, and deviſeth the Land for parcell of the years unto one of his Executors, the remainder unto a ſtranger, if the Executor who is the Deviſee doth enter, and occupie ſoly by force of the Deviſe, after the years determined, The ſtranger who is the Deviſee in remainder may enter, and occupie the Land during the reſidue of the years, if the other goods of the Teſtator were ſufficient to ſatisfie, and pay all the Teſtators debts. Quære, if the goods of the Teſtator be not ſufficient to ſatisfie, and pay his debts: But it ſeemeth he may enter notwithſtanding that, becauſe the Deviſe was once executed, &c.

574 But if the Teſtator had deviſed parcel of the years unto all the Executors, &c. The ſtranger who is remainder ſhall not enter, nor occupie without the aſſignment of the Executors, becauſe it cannot appear whether they occupie the Land as Executors, or as Deviſees. And therefore it ſhall be taken, that they occupy as Executors, and not as Deviſees, for that is more for the benefit, and profit of the ſoule of the Teſtator. Tamen quære, how they ſhall be adjudged in the Land, in ſuch caſe, &c.

575 If a man hath Land for term of years, and maketh his Will, & deviſeth ỹ ſame land unto Alice the wife of I. S. and maketh the ſame I. S. his Executor and dieth, and I. S. entreth into the Land, and occupieth the ſame, but it doth not appear whether he occupied the ſame as Executor, or in the right of his wife, and I. S. maketh his wil, but ſaith nothing of the

the terme in his will, and maketh T. K. his Executor, and dieth within the terme, it ſeemeth that the wife who was Deviſee cannot enter in the Land deviſed unto her without the aſſignment or aſſent of the Executor of her husband. Tamen quære.

576 And to come unto Free-hold, or Inheritance deviſed, know, That the Ordinary cannot intermeddle therewith, for ſuch eſtates doe not appertain unto the Executors, if a deviſe of them had not bén made. And it is to know, that ſometimes a man cannot enter into a free-hold, or inheritance deviſed unto him, without aſſignment or livery thereof made unto him.

577 And therefore it was uſed within the City of London in the time of King Edward 3. If a deviſe had bén made of tenements in London for life, in tail, or in fée, &c. the will as to the ſame ought to have been proved in the Guild-Hall of the City, and when it was proved, ſeiſin was given thereof. And if in ſuch caſe the Deviſee had entered of his own head without livery or aſſignment, the heire might have had an Aſſiſe of Mordancestor againſt him. And ſame law was for tenements in Oxford deviſed in fee, in tail, or for life Mutatis mutandis: which Wills ſo proved, and proclamations thereupon had, binde all manner of perſons as ſtrongly as a fine proclamed; which if they die not, make their claim to the ſame tenements within one yeare after the proclamations made: And ſo know, that of free-hold and inheritance deviſable, it ſhall be alwayes according to the cuſtome, if it be reaſonable, &c.

P. 49 E. 3. Deviſe 8.

578 But of free-hold and inheritance devi-
ſable, whereof ſuch a cuſtom to prove the will
is not uſed, nor any other cuſtome, but onely
that they are deviſable: In ſuch caſes the
deviſees after the death of the Deviſor may
enter without any aſſignment, if the deviſe be
of land or a houſe, whereof their eſtate ought
by the deviſe to be preſently executed.

579 And when free-hold or inheritance of
lands, tenements, &c which are at the Com-
15H.7.12. mon Law, or in uſe, are deviſed by ceſtuy que
uſe, by his will; the deviſe is good notwith-
ſtanding that the will be never proved, becauſe
the Ordinary hath not to do with free-hold
or inheritance; And in ſuch caſes the deviſees
thereof may make a feoffment, gift, grant,
leaſe, releaſe, or confirmation, as the caſe ſhall
require, by force of the Statute of 1 R. 3. cap.
1. But it is to know that nothing ſhall paſſe
by the deviſe of Ceſtuy qu. uſe, but that which
may lawfully paſſe from him.

580 And therefore if a man ſeiſed of Land,
doth thereof enfeoffe I. S. unto the uſe of I.
K. and Alice his wife, and unto the heirs of I.
K. and I. K. deviſeth the ſame land by his will
unto a ſtranger in fee, and dieth, living the
wife, That in this caſe the wife ſhall have the
whole land during her life, notwithſtanding
the deviſe of her husband, Caula patet, &c.

CHAP.

CHAP. IX.

Surrenders.

581 NOw is to ſpeak of Surrenders: And firſt, what things may not be ſurrendred by deed and what may. And as to ỳ know, that where a juſt grant, or other thing cannot take effect without a deed, ſuch eſtate or thing cannot be ſurrendred without deed, if not that it be in ſpecial caſes.

582 And therefore if a man ſeiſed of Rent-ſervice, Rent-charge, Rent-ſeck, common for years, or, &c in fee, &c. and granteth the ſame for life or for years, by deed (as he ought) the Grantee cannot ſurrender the ſame without deed.

583 But if Leſſée for life be of land, or of a houſe, and the Grantor granteth the reverſion unto a ſtranger for life, and the Leſſée attorn, the grant is void, if it be not by deed. And yet if the Leſſee dieth and the grantée entreth into the land, he may ſurrender the ſame without deed & off of the land, if the ſurrender be made within the County where the land is: But if the ſurrender be made in another County, it ought to be by deed, &c. And Leſſée for life of

19 H. 6. ſurr. 4.
14 H. 7. 2.
12 E. 3. ſurr. 21.

of land, or of a house upon condition by deed indented, may surrender his estate without deed. The same law is of lessee for years, &c.

584 Now is to shew, what estates may be surrendred, and unto what persons they may be surrendred, &c. And it is to know, that particular estates, as for life, or for yeares, may be surrendred unto him who hath the immediate remainder, or reversion unto the particular estate in his own right, if the estate in remainder or in reversion be such an estate wherein the particular estate may be drowned, if not that he who surrendreth have not a joynt estate in the free-hold, or in the terme for years, with him unto whom the surrender is made; and in other speciall Cases, &c.

H. 13 H. 4. surr. 10. 585 And estates in fee of some things issuing out of Lands, may be determined by the surrender of the deed unto the Tenant of the Land, by which deed it was granted, &c. And it hath bin holden, that an estate in fee of Lands, or Tenements, may be surrendred by the Tenant unto his Lord, who hath cause to have an action of Cessavit of the same Land, quære. But it is clear, that Tenant in fee-simple at the will of the Lord according to the custome of the Manor may surrender according unto the custome of the Manor, &c.

12 H. 6. surrend. 6. 586 If a man doth enfeoff I. S. and T. K. of certain land, to have and to hold unto them and to the heirs of T. K. and I. S surrendreth his estate unto T. K. it is a void surrender, notwithstanding that I. S. had but free-hold, and T. K. had a fee expectant to be executed in possession immediately after the death of I. S. and the

the reason is, because that T. K had a joynt possession in the Free-hold which I. S. and every joynt tenant is seised of the whole, so that the surrender cannot be the cause, that he hath the possession of any part of the land; and also his estate cannot drown in the estate of T. K. for either of them hath an estate of Free-hold in possession in and through the whole land.

587 If I. S. T. K. and C. D. be joynt Feoffées of lands, to have and to hold unto them and unto the heirs of T. K. And afterwards I. S doth release all his right unto D. C. and afterwards D. C. doth surrender unto T. K, &c. it is a good surrender for the third part of the land, &c.

588 If a lease for life be made of land, the remainder unto a stranger for life, the remainder unto another stranger in tail, and the Lessé doth surrender unto him in the remainder in tail, or unto his Lessor who hath the fee in reversion, living him in the remainder for life. This surrender is void, to take effect as a surrender, because that he unto whom the surrender is made, hath not the immediate estate in remainder unto him that maketh the surrender. But if he who made the surrender had but an estate for years, and in the surrender, there be words which amount unto a grant of his estate, then the surrender shall take effect by way of grant of his estate, &c. 14 H.7.2.2

589 If a lease for life be of land, the remainder of the same land unto a stranger for years, and the Lessé for life doth surrender his estate unto him in the remainder for years, it cannot take effect as a surrender, because that an estate for life cannot drown in an estate for years.

590 If

590 If Donée of a rent in tail, &c. surrendreth his estate unto his Donor who hath the reversion of the same land in fee, it is a void surrender; but if Lessée for life be of land, the remainder unto a stranger for life, and the Lessee doth surrender unto him in the remainder, it is a good surrender; for he unto whom the surrender is made, hath an estate for his own life in remainder, and an estate for a mans own life is a higher estate of freehold unto him, then the estate for the life of another man is: in the same manner as it is of land, shall it be of all rents, commons, corodies, &c. Mutatis mutandis, &c.

Au. 7. 11.

591 And it is to know, that if I. S. be seised of the Manor of Dale in fee, and granteth a rent issuing out of the same Manor, or a common, or any other thing in fee, if the Grantée doth surrender the deed by which the said rent, or, &c. was granted unto him, either unto his Grantor, or unto any other person being Tenant of the same Manor, notwithstanding that the tenant of the Manor be with divers others joyntly seised of the same Manor, and notwithstanding that he hath not but an estate for years in ℔ same Manor in remainder; by the surrender of this deed unto him, the rent or, &c. is determined and extinct.

592 But if the Grantee had recited by another deed, how a rent-charge was granted unto him, and reciting in the same deed all the effect of the grant, grant the same rent unto the Lessee for life of the Manor, To have and to hold unto him and his heirs, and surrendreth unto him the deed by which the grant was made unto him, and at the same time

time delivereth his deed of grant unto the Lessee, the same shall not enure nor take effect to determine and extinguish the rent; but shall take effect by way of grant, to take effect after the death of the Grantee. For at the time of the grant made unto him, he had possession and seisin for his life of the Manor out of which the rent was issuing, so that the grant could not take effect in him presently, but notwithstanding that, the grant shall take effect in his heire, if some other Act be not done to hinder the same. As if the Lessee grant the same rent unto a stranger, or otherwise purchaseth the reversion of the Manor out of which the rent is issuing, so as the fee of the Manor is executed in him, &c. Or if the Lessee in the same case enfeoffeth a stranger of the Manor, and the Lessor entreth for a forfeiture, the rent is determined and extinguished, because that the lessee had the fee of the rent at the time of the feoffment, to grant or to forfeit, &c. And by the feoffment he departed with the land in fee discharged of the rent; so that by this feoffment the rent is determined and extinguished, &c.

593 But if the Lessee of the Manor after the purchase of the rent commit waste in the whole Manor, or in parcel thereof, for which the Lessor doth recover in an Action of waste; yet the Lessee shall not have this rent during his life: But Quære, if the Lessee after the purchase of the rent, and before any waste done, grant the rent unto a stranger, and afterwards doth commit waste, if the Grantee shall commit have the rent of the Feoffor during the life of the lessee, &c.

594 But

594 But if a man be ſeiſed of a rent-charge in fee, iſſuing out of a Manor, or other land, and the tenant of the rent, or of the land is diſſeiſed, and the Grantee of the rent doth ſurrender his deed of grant unto the Diſſeiſee: It ſeemeth the ſame is no determination of the rent at this time: And yet the Diſſeiſee is tenant unto the Lord, as to abow upon him. But if the Diſſeiſee doth re-enter, then it ſeemeth the rent is determined and extinguiſhed, if he hath the deed of the grant of the rent in his poſſeſſion by force of the ſurrender of the ſame deed, &c.

595 If a man ſeiſed of land in fee, granteth a rent-charge out of the ſame land in fee, and the Grantor dieth without heir, and before any entry made into the land by the Lord or any other perſon, the Grantee doth ſurrender his deed of grant unto the Lord. Quære, if the rent be immediately determined and extinguiſhed: becauſe that the Lord had but a poſſeſſion in law in the land out of which the rent was iſſuing at the time of the ſurrender made; yet it ſeemeth the rent is immediately extinguiſhed, &c.

596 But if a man who is tenant in taile of ſuch a rent or common, &c. ſurrendreth his deed of grant unto his Grantor, or unto another who is tenant of the land out of which the rent is iſſuing, it ſhall not extinguiſh the rent, or, &c. Cauſa patet.

597 But if the Grantee of a rent-charge in fee granteth the ſame rent in fee unto him who is ſeiſed of the land out of which the rent is iſſuing in fee, the ſame ſhall enure and take effect to determine and extinguiſh the rent, as

it

it appeareth in the Chapter of Grants, &c.

598 If tenant in tail doth diſcontinue the tail in fee and dieth; and the iſſue in tail bringeth a Formedon againſt the Diſcontinuee, and pendant the ſuit ſheweth the deed of entail unto the tenant in the County, and the Tenant ſeeing the deed, doth ſurrender unto him, &c. the ſame is no good ſurrender. 20 H. 1. 21. 34 Aſſ. p. 11.

599 And notwithſtanding that ſome particular eſtates may be ſurrendred in manner and form as is aforeſaid; yet it behoveth that he that doth ſurrender be ſeiſed or poſſeſſed of ſuch eſtate at the time of the ſurrender, otherwiſe ſuch ſurrender ſhall not be good, if not, that it be in ſpecial caſes.

600 And therefore if leſſee for life, or for years of land, be ouſted of the land by a ſtranger, and after the ouſter, and before his entry, he doth ſurrender unto his leſſor, it is no good ſurrender, becauſe he hath but a right at the time of the ſurrender, &c. And therefore if a woman hath title to have dower by the common law, and ſhe doth ſurrender unto him againſt whom ſhe ought to have dower, it is a void ſurrender.

601 If a leaſe for ten years be made to begin at the feaſt of St. Michael the Arch-Angel next after the leaſe, and before the feaſt of St. Michael, the leſſee doth ſurrender unto his leſſor, it is no good ſurrender, yet he may grant the ſame before the ſaid feaſt of St. Michael. But the ſurrender is not good, becauſe that the leſſee is not in ſeiſin and poſſeſſion legaliter of the thing leaſed before the feaſt of St. Michael come, &c.

602 And a releaſe made by the leſſor unto the

the leſſee before the Terme doth begin is void; and notwithſtanding that the leſſee before the Terme doth begin doth enter into the thing leaſed unto him, and do an act which amounteth unto waſte, the leſſor ſhall not have an action of waſte for the ſame. And if the leſſee after the terme begun, and before he doth enter by force of the leaſe, doth ſurrender unto his leſſor, it ſeemeth to be a void ſurrender, if any other perſon be in poſſeſſion of the thing leaſed at the time of the ſurrender, if not that he hath parcel of the term of the leſſee, by force of the grant of the leſſee, &c.

603 If a man ſeiſed of land doth leaſe the ſame for ten years to begin preſently, and the leſſor waiveth the poſſeſſion, and before any entry made into the ſame land by any perſon, the leſſee doth ſurrender his eſtate unto his leſſor, it is a good ſurrender, and yet the leſſee ſhall not have an action of Treſpaſs, for a treſpaſs done upon the land before his entry: and alſo a releaſe made unto him by his leſſor is void before his entry, &c.

604 And if there be leſſee for ten years of land, and he granteth parcel of the years unto a ſtranger, and the Grantee doth enter, &c. and the leſſee doth ſurrender unto his leſſor, it is a good ſurrender: but if the Grantee of the leſſee had ſurrendred unto the leſſor of his grantor before the ſurrender made by the leſſee, the ſame ſhall not take effect as a ſurrender,
14 H. 7. 3. Cauſa patet.

605 If there be leſſee for years of land, the remainder of the ſame land unto a ſtranger for life, the remainder unto another in fee, and during the years, he in the remainder for life

life doth ſurrender unto him in fée, it is a good ſurrender: but if in the ſame caſe the leſſée for years had been put out of the land by one that had no right, and he who put him out dyeth ſeiſed of the ſame land and his heir doth enter, upon whom the Leſſée for years doth enter, and then he in the remainder for life doth ſurrender unto him in the remainder in fée, the ſame is a void ſurrender, becauſe he had but a right to the remainder, and alſo he unto whom the ſurrender was made, had but a right of remainder in fée, at the time of the ſurrender, &c.

606 If there be Grantée of a Rent charge in fée, and a ſtranger is perſon of the rent, and the Grantée doth ſurrender his deed by which the grant of the rent was made unto the tenant of the land, the ſame ſhall determine and extinguiſh the rent, notwithſtanding that the pernancy be made with the aſſent of the tenant of the land, &c. And it is to know, that there are two manner of ſurrenders, viz. A ſurrender in deed, and a ſurrender in law. And firſt, is to ſpeak of a ſurrender in deed, and what words make ſuch a ſurrender.

607 And as unto that, know, that when the words prove a ſufficient aſſent, and will of him who is the particular tenant, that he in the remainder or the reverſion ſhall have the thing which he hath or holdeth. They are words ſufficient to make a ſurrender, if he unto whom the ſurrender is made doth agree thereunto.

608 And therefore, if Leſſée for life or for years of land ſay unto his Leſſor, that his will is, that his Leſſor ſhall enter into the land 40 E. 3. 24.

which he holdeth for life, or for years, and shall have the same, and by force thereof the lessor doth enter into the same, it is a good surrender, and so shall it be, if he say unto his lessor, or unto him in the remainder, or reversion, that he will that he have the land, & the lessor doth enter by force thereof, or agreeth thereunto, it is a good surrender: But if the lessor, or, &c. doth not enter by force thereof, nor agreeth thereunto, the surrender is not good; for he cannot surrender unto him against his will: But if he unto whom the surrender is made do once agree to the same, he cannot afterwards disagree thereunto. And in the time of King Edward 1 the lessor did enter into the land leased for life, with the assent of the lessee: and because it was not in the presence of men of good credit, it was holden to be a void surrender. But the law is otherwise at this day, &c.

6 E. 3. 7.

Temps E. 1. Assise 403.

609 And if the lessee cometh unto him in the remainder, or in the reversion, and saith unto him, that he will occupie the land no longer, and he in the remainder by force thereof doth enter, it is a good surrender. And if the lessee doth say unto his lessor, I do surrender unto you the land which I hold of your lease, Or if he saith, I hold such land, or house, &c. and sheweth certain the land or house, &c. of your lease, and I do surrender the same land or house, &c. unto you, and the lessor doth agree thereunto, the same is a good surrender.

610 And if I. S. holdeth one acre of land for years of the lease of C. D. and holdeth another acre of land for life of the lease of the same C. D. And I. S. doth say unto C. D. I surrender unto

unto you all the land which I hold of your leaſe, it is a good ſurrender for both acres: So ſhall it be, if he ſay, I ſurrender unto you the land I hold of your leaſe, for in ſo much as he doth not expreſſe what land, it ſhall be taken for all the land which he holdeth of his leaſe, becauſe the ſurrender is his Act and Deed; and the ſame ſhall be taken ſtrongeſt againſt him, &c. But if he had ſurrendred the land which he held of his leaſe for yeares, he ſhall not have by this ſurrender the land which he held for his life, ſo ſhall it be è converſo, &c.

611 If I hold one acre of land for life of the leaſe of the father of I. S. and I hold one other acre for life or years of the leaſe of I. S & I ſurrender unto I. S the land which I hold of his leaſe, by this ſurrender he ſhall not have the land which I hold of the leaſe of his Father, notwithſtanding that the reverſion of the ſame acre be in him by deſcent from his Father, &c.

612 If a woman who is Tenant in dower taketh a Husband, and the Husband doth ſurrender the Land which he holdeth in the right of his wife, for the life of the wife, it is a good ſurrender during the coverture. And if the Husband dieth before the wife: Or if they be divorced, Cauſa præ-contractus, the wife may enter, and defeat the ſurrender, notwithſtanding that he to whom the ſurrender was made died ſeiſed of the land in his demeſn as of fee, and his heir be in by deſcent. The ſame Law is, if the ſurrender be made by the husband and wife, &c.

613 But if a ſingle woman who is leſſée for years of land, or a houſe, &c. taketh a Huſband, and the Husband doth ſurrender the Land and dieth before the years are determined, yet the Surrender ſhall ſtand. If a man be ſeiſed of land for the life of his wife, in the right of his wife, and he and his wife will ſurrender the ſame land by fine, the wife ſhall be examined, becauſe ſhe giveth by fine; and no particular tenant cannot ſurrender by fine, if he be not named in the writ whereupon the fine ſhall be levied.

15 E. 3. Durels 13. 614 A ſurrender made by an Infant by word of the land is not good, inſomuch as if he ſurrendereth an eſtate of Free-hold, and by force hereof he to whom the Surrender is made doth enter, the Infant ſhall have an Aſſiſe: The ſame Law is of a ſurrender made by dureſſe of impriſonment; a ſurrender made by a man who is not Compos mentis, is good for ever. 9 E. 4. 4. Tamen quære, &c.

615 If two men ſeiſed of land in fee, leaſe the ſame Land unto a ſtranger for life, or for years, and he doth ſurrender all his eſtate in the Land unto one of them, the ſame ſhall enure unto them both. See the reaſon thereof in the Chapter of Grants, &c. But if the leſſee for life hath ſurrendred the lands unto both the Leſſors, or unto one of them for 20 years, the ſame ſhall not take effect by way of ſurrender, for then there remaineth an intereſt in the Leſſee, which is as a mean remainder between the eſtate which is ſurrendred and their reverſion, &c. In the ſame manner as it is of ſurrender of land, ſo ſhall it be of ſurrenders of deeds, or of any other things, Mutatis mutandis, &c.

616 If

616 If a man ſeiſed of land, leaſeth the ſame land for life, and granteth the remainder unto a ſtranger for life, and the Leſſee for life granteth his eſtate unto him in the remainder for life, the Law ſaith that this ſhall enure by way of ſurrender: So ſhall it be, if the leſſee for life doth enfeoff him in the remainder for life. The ſame law is, if a man ſeiſed of land in fee leaſeth the ſame for life, and the Leſſee doth thereof enfeoff his Leſſor, &c. 14 H 8.15.

617 If leſſee for ten years of land, doth take a new leaſe of the ſame land of his leſſor for 20 years, it is a ſurrender of the firſt leaſe, &c. But if leſſee for life or years of a houſe, and land, do remove his goods and chattels out of the houſe and land, by reaſon of the greatneſſe of the rent, or becauſe he is behind in his rent, or for any other cauſe, and the Leſſor doth enter into the houſe and land, this is no ſurrender: For it doth not appear that the will of the Leſſee is, that his leſſor ſhall have the houſe and land, but that he waiveth the poſſeſſion for his own advantage. 1 Aſſ p.20 T. 8 E.3. 46.

618 If leſſee for life of land granteth his eſtate unto him in the reverſion, and unto two other men, it is a ſurrender for no part. And yet if there be Lord, and tenant by fealty and rent. And the Lord granteth his Seignory unto the Tenant, and a ſtranger in fee the moitie of the rent ſhall be extinguiſhed in the tenancy, for it ſhould be inconvenient, that the Tenant ſhould have rent iſſuing out of his own land, unto his own uſe; and the other moitie of the rent with the fealty, the Grantee ſhall have the ſame, &c. M.7 H. 6. 3. P. 34 H. 6. 41.

619 But when leſſee for life of land grant-

eth his eſtate unto him in the reverſion, and unto two others, he alone hath not intereſt, and eſtate in the free-hold, but he hath a joynt eſtate with others in the Free-hold, ſo that if they ſurvive, they ſhall have the whole Free-hold by the ſurvivorſhip: And alſo he in the reverſion had nothing in the Free-hold before the grant. And it is not impertinent but that he in the reverſion may take livery of ſeiſin and eſtate in the ſame Free-hold for the advantage of another perſon. And if leſſee for
50 E. 3. 3. life be, the remainder for life, and the leſſee for life doth commit waſte, this waſte is diſpuniſhable at this time for the advantage of him in the remainder for life, &c. See other reaſons concerning this matter in the Chapter of Grants, &c.

620 If leſſee for life granteth his eſtate unto him in the reverſion, the remainder unto a
9 H. 6. 4. ſtranger in fee, it ſeemeth this remainder is void, becauſe that when he in the reverſion alone is to take the whole, and all the eſtate which was out of him, and no more, and he hath the reverſion in his own right, It ſhall be hard that he ſhall take by livery of ſeiſin; And ſo it ſeemeth that the grant ſhall enure by way of Surrender, and that the remainder is void, Tamen quære, becauſe that the livery of ſeiſin is made upon the whole deed, and by the ſame deed the remainder is granted unto the ſtranger; and ſo it is unto the profit and benefit of the ſtranger, &c. But if leſſee for life of land leaſeth the ſame land unto him in ℈ re-
M. 39 E. 3. verſion for life, the remainder unto a ſtranger
29. in fee, the ſame is no ſurrender, Cauſa patet.
41 E. 3. 29. 621 If there be leſſee for life of land, the re-
41 Aſſ. p. 2. mainder

mainder in tail unto a ſtranger, the remainder over in tail unto another man, the remainder unto the right heirs of the leſſee, & the leſſee doth thereof enfeoff him in the firſt remainder in tail, and his wife in fee, and the husband dieth without iſſue, living the leſſee, and he in the ſecond remainder doth enter and put out the wife, ſhe ſhal have an aſſiſe becauſe ſhe ſhall have the land during the life of the leſſee who was his feoffor. Tamen quære. And if he in the ſecond remainder in tail dieth without iſſue, living the wife, then he ſhall retain the land unto him and his heirs for ever, &c.

622 If a ſingle woman ſeiſed of land in fee leaſeth the ſame unto a ſtranger for life, and taketh a husband, and the leſſee doth grant his eſtate unto the husband, this is no ſurrender; And yet the husband is ſeiſed of the reverſion in fee, which is immediate unto the eſtate of the leſſee, viz. in the right of his wife, and not in his own right, &c.

623 If leſſee for life be of land, the reverſion unto two coperceners, and one of them taketh a husband, and the leſſee granteth his eſtate unto her and her husband, this is no ſurrender: But if tenant in dower be of lands, and ſhe granteth her eſtate unto him in the reverſion reſerving rent, and the grantee taketh a wife, and dieth, his wife ſhall have dower; which proveth that the grant doth enure by way of ſurrender; And yet the reſervation ſhall be good if it be by deed indented, to take effect by way of grant, &c. But the Tenant in dower ſhall not diſtrain for the rent becauſe ſhe had no reverſion, and no clauſe of diſtreſs is in the deed; And ſhee ſhall not have an 2 H. 7. 14. P. 45 E. 3. 13.

action of debt because she hath an estate of free-hold in the Rent; but she shall have the same as a Rent-seek: more shall be said of this in the Chapter of Reservations.

624 And it is to know, that a surrender of a free-hold made by deed indented upon condition is good: And if the surrender be of an estate for years in land, then the surrender may be upon condition without deed: And if a surrender be made of the Free-hold by deed indented upon condition, that if he to whom the surrender is made, do not goe unto Yorke within one moneth next following the date of the surrender, that then it shall be lawful for him who made the surrender to re-enter into the land, the same is a good surrender upon condition.

5 E.4. 34.

CHAP.

CHAP. X.

Reſervations.

625 NOw is to ſpeak of Reſervations. And as to that, know, That there are many words by which a man may reſerve unto himſelfe that which was not in him before, and abridge the tenure of that which was in him before, viz. Tenendum, Reſervandum, Reddendum, Solvendum, Faciendum, and other the like. And there are divers words by which a man cannot properly reſerve any thing, but thoſe which were in him before, viz. Exceptis, Reſervatis, præter, ſalvis, and other the like, &c.

626 And therefore if a man be ſeiſed in fée, of one acre of land, hee may let the ſame acre for life, to hold of him by fealty and ten ſhillings rent, and if the fealty or the rent be behinde, he may diſtrain, and yet the ſame was in Eſſe before; See the reaſon thereof in the Book of M. Littleton, in the Chapter of Rents, and ſée there many good Caſes concerning Reſervations. And it is to know, that a Reſervation ought to be out of ſuch a thing unto which a man may reſort for to take M. 21 E. 3. 49.

take a distresse, as out of land, or a house, and not out of a Rent, &c. if not that the Reservation be made by our soveraign Lord the King, of whose title I will not speak.

627 But if there be Lord, Mesne, and Tenant, and the Mesne giveth the menalty in tail, reserving fealty, and rent, this is a good reservation, because the tenancy may come unto the Donee: But the Donor nor his heir shall not distrain for the fealty, nor the rent, notwithstanding that they be behinde, before the tenancy be come unto the Donee, and then he shall distrain for all the arrerages from the time of the gift, and the Donee shall not avoid the same.

P. 12 E. 4. 11. 628 If there be Lord, and Tenant by fealty, and 12 pence and the Lord releaseth or confirmeth the estate of the tenant, to hold of him by 1 d. the same is good, and yet he held of the Lord by this 1 d. and more before, &c. And if a man seised of land, doth give the same in tail, reserving 12 d. the same is a good reservation, by the word Reservandum.

M. 8 E. 4. 8.

629 If there be Lord, and Tenant by Fealty, and xii d. And the Lord doth release all his right unto the Tenant, or confirmeth the estate of the Tenant, reserving unto him 1 d. it is good, yet it was in effe before, &c. And if the husband and wife grant, and render a Manor for terme of life by fine, rendering the first yeare 1 d. and for six years then next following every yeare a Rose at the Feast of Easter, and after the six years every year 10 l. in money, with clause of distresse; This fine shall be received; but a fine with clause of reentry shall not be received, because that then the

F. 44 E. 3. 22.

the eſtate ſhould be defeiſable, which is againſt the nature of a fine, &c. For finis finem litibus imponit, &c.

630 If a man ſeiſed of land, leaſeth the ſame for life, rendring for the firſt 6 yeares 3 quarters of Wheat; and if he hold over, &c. yeilding 5 l. by the year, this is a good reſervation by this word Reddendum, &c.

631 If there be Lord and tenant by knights ſervice and 20 s. rent, and the Lord confirmeth the eſtate of the Tenant, rendring unto him onely homage, fealty, and eſcuage when it ſhall be aſſeſſed by Parliament unto 40 s. 40 s. and when leſſe, leſſe, by this confirmation the 20 s. rent is determined, and yet this word (Reddendum) is more properly the word of the confirmer, then of the confirmee, &c. M. 12 E. 3. Exec. 6.

632 And if a man ſeiſed of land, leaſeth the ſame for life, or giveth it in tail, Solvend. ſibi & hærend. ſuis annuatim, 20 d. it is a good Reſervation. And if there be Lord and Tenant by fealty and 12 pence, and the Lord doth confirme the eſtate of the Tenant, Ad ſolvendum ſibi 1 d. the ſame is good. And if a man ſeiſed of land, leaſeth the ſame for life, or giveth the ſame in taile unto a ſtranger, pro homagio ſuo faciendo, it is a good Reſervation, &c.

633 If there be Lord and Tenant by Fealty, and 12 d. and the Lord doth confirm the eſtate of the tenant Ad faciẽdum ſibi fidelitatem tantum, it is a good confirmation, and by the ſame the rent ſhall be determined, &c. And it is to know, that every thing which is reſerved by any of the words aforeſaid, ought to be within the purport of the ſame words, otherwiſe 22 H. 3. gard. 151. 13 R. 2. Avowry 89. P. 49 E. 3. 10.